

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of)	
)	
Joanne Elkins, Hattie Lanfair,)	
Rachelle Lee)	
Complainants,)	Proceeding Number _____
)	File No. EB- _____ -
v.)	
)	
AT&T Corp.)	
Defendant.)	

FORMAL COMPLAINT OF JOANNE ELKINS, HATTIE LANFAIR
AND RACHELLE LEE

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*Counsel for Joanne Elkins,
Hattie Lanfair and Rachelle
Lee*

Dated: August 24, 2017

**SECTION 208 FORMAL
COMPLAINT INTAKE FORM**

1. Case Name: Joanne Elkins, Hattie Lanfair, Rachelle Lee v. AT&T Corp

2. Complainant's Name, Address, Phone and Facsimile Number, e-mail address (if applicable): Joanne Elkins, 1423 East 85th St, Cleveland, Ohio, 44106; Hattie Lanfair, 12721 Iroquois Ave, Cleveland, Ohio and Rochelle Lee, 2270 73rd St, Cleveland, Ohio 44103

3. Defendant's Name, Address, Phone and Facsimile Number (to the extent known), e-mail address (if applicable): AT&T 208 S. Akard Street, Dallas, Texas 75202.

4. Complaint alleges violation of the following provisions of the Communications Act of 1934, as amended: Sections 201, 202, 206 and 208 of the Communications Act Section 706 of the 1996 Telecommunications Act and Sections 1.720 et seq. of the

Answer (Y)es, (N)o or N/A to the following:

Y 5. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.734.

Y 6. Complaint complies with the pleading requirements of 47 C.F.R. Section 1.720.

Y 7. Complaint conforms to the format and content requirements of 47 C.F.R. Section 1.721, including but not limited to:

Y a. Complaint contains a complete and fully supported statement of facts, including a detailed explanation of the manner in which the defendant is alleged to have violated the provisions of the Communications Act of 1934, as amended, or Commission rules or Commission orders.

Y b. Complaint includes proposed findings of fact, conclusions of law, and legal analysis relevant to the claims and arguments set forth in the Complaint.

Y c. If damages are sought in this Complaint, the Complaint comports with the specifications prescribed by 47 C.F.R. Section 1.722(a), (c).

Y d. Complaint contains a certification that complies with 47 C.F.R. Section 1.721(a)(8), and thus includes, among other statements, a certification that: (1) complainant mailed a certified letter outlining the allegations that formed the basis of the complaint it anticipated filing with the Commission to the defendant carrier; (2) such letter invited a response within a reasonable period of time; and (3) complainant has, in good faith, discussed or attempted to discuss, the possibility of settlement with each defendant prior to the filing of the formal complaint.

N/A e. A separate action has been filed with the Commission, any court, or other government agency that is based on the same claim or the same set of facts stated in the Complaint, in whole or in part. If yes, please explain:

 f. Complaint seeks prospective relief identical to the relief proposed or at issue in a notice-and-comment proceeding that is concurrently before the Commission. If yes, please explain:

Y g. Complaint includes an information designation that contains:

 (1) A complete description of each document, data compilation, and tangible thing in the complainant's possession, custody, or control that is relevant to the facts alleged with particularity in the Complaint, including: (a) its date of preparation, mailing, transmittal, or other dissemination, (b) its author, preparer, or other source, (c) its recipient(s) or intended recipient(s), (d) its physical location, and (e) its relevance to the matters contained in the Complaint; and

 (2) The name, address, and position of each individual believed to have firsthand knowledge of the facts alleged with particularity in the Complaint, along with a description of the facts within any such individual's knowledge; and

 (3) A complete description of the manner in which the complainant identified all persons with information and designated all documents, data compilations, and tangible things as being relevant to the dispute, including, but not limited to, identifying the individual(s) that conducted the information search and the criteria used to identify such persons, documents, data compilations, tangible things, and information.

Y h. Attached to the Complaint are copies of all affidavits, tariff provisions, written agreements, offers, counter-offers, denials, correspondence, documents, data compilations, and tangible things in the complainant's possession, custody, or control, upon which the complainant relies or intends to rely to support the facts alleged and legal arguments made in the Complaint.

Y i. Certificate of service is attached and conforms to the specifications prescribed by 47 C.F.R. Sections 1.47(g) and 1.735(f).

j. Verification of payment of filing fee in accordance with 47 C.F.R. Sections 1.721(13) and 1.1106 is attached.

- Y 8. If complaint is filed pursuant to 47 U.S.C. Section 271(d)(6)(B), complainant indicates therein whether it is willing to waive the 90-day complaint resolution deadline.
- Y 9. All reported FCC orders relied upon have been properly cited in accordance with 47 C.F.R. Sections 1.14 and 1.720(i).
- Y 10. Copy of Complaint has been served by hand-delivery on either the named defendant or one of the defendant's registered agents for service of process in accordance with 47 C.F.R. Section 1.47(e) and 47 C.F.R. Section 1.735(d).
- Y 11. If more than ten pages, the Complaint contains a table of contents and summary, as specified in 47 C.F.R. Section 1.49(b) and (c).
- Y 12. The correct number of copies required by 47 C.F.R. Section 1.51(c), if applicable, and 47 C.F.R. Section 1.735(b) have been filed.
- Y 13. Complaint has been properly signed and verified in accordance with 47 C.F.R. Section 1.52 and 47 C.F.R. Section 1.734(c).
- Y 14. If Complaint is by multiple complainants, it complies with the requirements of 47 C.F.R. Section 1.723(a).
- Y 15. If Complaint involves multiple grounds, it complies with the requirements of 47 C.F.R. Section 1.723(b).
- Y 16. If Complaint is directed against multiple defendants, it complies with the requirements of 47 C.F.R. Section 1.735(a)-(b).
- Y 17. Complaint conforms to the specifications prescribed by 47 C.F.R. Section 1.49.

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**FORMAL COMPLAINT OF JOANNE ELKINS, HATTIE LANFAIR
AND RACHELLE LEE**

1. Pursuant to Sections 201, 202 and 208 of the Communications Act, Section 706 of the 1996 Telecommunications Act, and Sections 1.720 et seq. of the Commission's rules, Complainants Joanne Elkins, Hattie Lanfair, and Rochelle Lee bring this formal complaint against AT&T Corporation alleging: 1) unjust and unreasonable discrimination in the provision of broadband internet access service; 2) misrepresentation of its intent to serve all residents in Cleveland, Ohio. 47 U.S.C. §§ 201, 202, 208, 1302; 47 C.F.R. §1.720 *et seq.* Complainant further requests the Commission to initiate an investigation pursuant to Section 403. 47 U.S.C. §403.

SUMMARY

2. This complaint, brought by Joanne Elkins, Hattie Lanfair, and Rachelle Lee, three African-American, low-income residents of Cleveland, OH alleges that AT&T's offerings of

high speed broadband service violates the Communications Act’s prohibition against unjust and unreasonable discrimination.

3. The complaint alleges specific harms inflicted on the complainants.

4. The complaint, relying on a study conducted by the National Digital Inclusion Alliance and Connect Your Community, titled, *AT&T’s Digital Redlining*, demonstrates that the failure to provide high speed broadband services to them is part of a pattern by AT&T across Cleveland and across the United States.

5. The study offers clear evidence that AT&T has withheld fiber-enhanced its “Fiber To the Node” VDSL infrastructure (“FTTN”)– which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets—from most of the overwhelming majority of census blocks with individual poverty rates above 35%. These high poverty blocks include Cleveland neighborhoods such as Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and other low-income communities.

6. Such low-income neighborhoods have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than what AT&T provides to middle-income city neighborhoods as well as most suburbs. As a result, their residents are left with severely limited and uneven Internet access; no access to AT&T’s competitive fiber-enabled video service.

7. As such, complainants request that the Commission: (a) find that Defendant AT&T has violated Section 202, 254 and 706 of the Act, 47 U.S.C. § 202, 254, 1302, by failing to serve the low-income, communities of color in Cleveland, Ohio, and consequently, issue preliminary and permanent injunctions prohibiting AT&T from engaging in the discriminatory and anticompetitive conduct and practices alleged herein; and (b) find that AT&T has violated

Sections 202, 254 and 706 of the Act, codified at 47 C.F.R. §1302, 47 U.S.C. §§ 202, 254 and 1302, by failing to deploy broadly, and thereby direct specific performance of AT&T's obligations, including but not limited to an obligation upon AT&T to provide broadband services to the lower income minority communities in Cleveland, Ohio.

8. Complainants request the Commission move immediately to designate process for discovery.

9. Complainants seek a hearing on the amount of damages in a separate proceeding per a supplemental complaint per Commission Rule 1.722. 47 C.F.R. § 1.722. Dam

PARTIES AND COUNSEL

10. Complainants Joanne Elkins, Hattie Lanfair, and Rochelle Lee, three African-American, low-income, residents of Cleveland, Ohio.

11. Complainants are represented by Attorney Daryl D. Parks. Parks & Crump, LLC. 240 N. Magnolia Dr., Tallahassee, Florida.

12. Defendant AT&T is a Texas corporation with its principal place of business in 208 S. Akard Street, Dallas, Texas 75202. AT&T is operating as a common carrier, and specifically as a telecommunications, video programming service and a broadband service, that is subject to the Act.

13. Defendant is represented by Attorney James Meza III, Senior Vice President and Assistant General Counsel, AT&T 2260 East Imperial Highway, El Segundo, CA 90245.

JURISDICTION

14. As detailed in the legal analysis section below, the Commission has jurisdiction pursuant to Sections 201, 202 and 208 of the Communications Act, Section 706 of the 1996

Telecommunications Act, and Sections 1.720 et seq. of the Commission's rules. 47 U.S.C. §§ 201, 202, 208, 1302; 47 C.F.R. §1.720 et seq. AT&T is a common carrier, 47 U.S.C. § 153, subject to Title II of the Act, including Sections 202 and 706.

15. The Commission has authority to initiate an investigation pursuant to Section 403 of the Communications Act. 47 U.S.C. §403.

16. The Commission possesses additional authority pursuant to Sections 151 and 254 of the Communications Act, 47 USC § 151, 254, and the Commission's rules including 47 C.F.R. §§ 1.1, 4(i), 1.17, 1.24, 1.52.

REQUIRED CERTIFICATIONS

17. *Settlement Discussions.* Counsel for complainants and Defendant have engaged in significant discussions in writing and one in-person meeting. Defendant does not acknowledge its obligation to serve Complainants; therefore parties are sufficiently far apart that we seek Commission intervention in this dispute. Pursuant to the Commission's rules (47 C.F.R. § 1.721(a)(8)), Complainant hereby certifies that it has attempted in good faith to discuss the possibility of settlement with AT&T prior to filing this Formal Complaint. See Letter from Daryl D. Parks to AT& (dated April 24, 2017). (see attached)

At various points in time, Complainant and AT&T have discussed settlement but at present, the parties remain far apart. Counsel for AT&T expresses an unwillingness to engage in mediation. AT&T Provided a Letter Reply to Daryl Park's April 24, 2017-dated later (dated Aril 28, 2017) and a second letter (dated May 5, 2017). To which, Daryl Parks replied with his a letter dated May 23, 207 and to which AT&T replied on June 12, 2017. (see attached)

The parties actually met in person during a July 21, 2017 meeting with AT&T attended by Daryl D. Parks, Cheryl Leanza consultant and staff support and Montana Williams, a summer Associate and staff support. AT&T representatives attending this meeting included Robert Quinn, SEVP, External & Legislative Affairs; Len Cali, SVP, Global Public Policy; Claudia Jones, SVP, Public Affairs & Communications; David Lawson, SVP, Assistant General Counsel and Tanya Lombard, AVP, Public Affairs and Communications. The meeting ended with a flat denial by AT&T that it is redlining. Mr. Parks replied to this meeting with a letter to Chairman and CEO Randall Stephenson; Senior Vice President and Secretary Stacey Marris; Senior Vice President and assistant General Counsel James Meza III and Senior Vice President, External and Legislative Affairs, Robert Quinn expressing his disappointment with the tenor of members at the meeting, in light of commitments the company has made in the past to broadly serve.(dated July 24, 2017) see attached.

AT&T did agree to offer to deploy a 5G pilot but that is not sufficient but is basic. The company has noted and has advocated for before, it wants the flexibility and freedom to offer different tiers of service to different customers, and the NDIA report shows it is doing just that. Therefore, Complainant is not satisfied with the concession of expanding the 5G pilot alone.

Pursuant to the Commission's rules regarding separate actions (47 C.F.R. § 1.721(a)(9)), Complainant states that no party has filed any separate actions in any fact finding or decision making body.

18. *Payment of Fee and Registration Number.* Complainants paid the required \$230.00 fee on August 22, 2017 and obtained the Commission-required FRN as follows: FRN # 0026738203

FACTS

I. Introduction

19. This complaint brings to the Commission the needs of low-income individuals who require, as most people in the United States do today, reasonable access to affordable broadband services. Digital or electronic redlining is the failure to provide service, or providing inferior service, to a community—typically to a community of color or a low-income community in an urban area.¹ Such discrimination is most likely when communities do not benefit from competition and when they lack political power to advocate for their own rights as consumers.

II. Complainants

20. Complainants Joanne Elkins of 1423 East 85th Street, Cleveland, Ohio, 44106; Hattie Lanfair of 12721 Iroquois Avenue, Cleveland, Ohio and Rochelle Lee of 2270 73rd St, Cleveland, Ohio 44103; are low-income residents in the AT&T Cleveland service area with combined first-hand experience as AT&T customers of over 40 years. They assert that they have an interest to acquire high speed broadband and as customers of AT&T have paid for broadband access but get speeds that are too slow to accommodate the most basic of functionalities on their home, mobile, desktop devices. Ms. Elkins explained having purchased a \$1500 security equipment to protect her home and provide her security as a low vision visually impaired individual, only to discover the security system was rendered useless because of the slow

¹ Leonard M. Baynes, *Deregulatory Injustice and Electronic Redlining: The Color of Access to telecommunications*, 56 Admin. L. Rev. 263, 269-270 (2004); James J. Halpert & Angela J. Campbell, *Electronic Redlining: Discrimination on the Information Superhighway*, cited in *New Challenges: The Civil Rights Record of the Clinton Administration* Mid-Term, 278-279 (Corrine M. Yu & William L. Taylor eds., 1995).

broadband speeds from her AT&T Broadband service, making the home security system ineffectual. Ms. Lanfair has attempted to get an upgrade of her services but as told none is available. Her daughter is a teacher and cannot stay over her home during the school year because she cannot download homework. Ms. Lee complained that her grandchildren that visit her home are unable to stream videos or play games on their devices because of the painfully slow services. It is their belief that they and the residents and children of their community are deprived because they are stuck with horribly slow broadband service while still paying monthly fees for access. To them, AT&T has given them inequity of service, compared to the service they've learned residents in wealthier parts of the city who receive broadband service and bullet speed comparatively.

III. Evidence of AT&T Redlining in Cleveland

21. A recent detailed study, *AT&T's Digital Redlining*, by two non-profit groups with extensive experience in digital inclusion -- Connect Your Communities and National Digital Inclusion Alliance demonstrates that the experience of Complainants Elkins, Lanfair and Lee are not unique or individualized.

22. The study, based on AT&T's own data submitted to the Commission via Form 477 offers clear evidence that AT&T has withheld the standard product offering for most suburbs--fiber-enhanced its "Fiber To the Node" VDSL infrastructure ("FTTN")-- from most the overwhelming majority of census blocks with individual poverty rates above 35%. As a consequence, residents of these neighborhoods: suffer uneven, often severely limited Internet access , in many cases 3 mbps downstream or less, and also lack access to AT&T's competitive fiber-enabled video service and the benefits such competition and service would bring.

23. The study analyzes Form 477 data, which lists 13,457 Census blocks in Cuyahoga County served by AT&T with ADSL2, VDSL, or FTTH service. Of the 5,567 blocks located in the city of Cleveland, in only 34% (1,904) is the Maximum Advertised Download Speeds provided by VDSL or FTTH. Of the 7,890 blocks in the rest of the county, the FTTH/VDSL percentage is 61%.

24. Twenty-two percent of Cleveland Census blocks were reported by AT&T to have maximum residential download speeds of 3 Mbps or less. Fifty-five percent had maximum download speeds no greater than 6 Mbps. The comparable percentages for the rest of Cuyahoga County were 12% and 24%, respectively.

25. The analysis shows a clear and troubling pattern: A pattern of long-term, systematic failure to invest in the infrastructure required to provide equitable, mainstream Internet access to residents of the central city (compared to the suburbs) and to lower-income city neighborhoods. Specifically, AT&T has chosen not to extend its “FTTN” VDSL infrastructure – which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Cleveland Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%.

26. The study’s results provide clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high poverty rates – including Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and others.

27. AT&T has chosen not to extend its “FTTN” VDSL infrastructure – which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Cleveland Census blocks, including the overwhelming majority of

blocks with individual poverty rates above 35%. These neighborhoods have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs.

28. As a result, their residents are left with: 1) uneven, often severely limited Internet access – in many cases 3 mbps downstream or less; and 2) no access to the competitive fiber-enabled video service that AT&T promised communities in exchange for “cable franchise reform”, i.e. the elimination of municipal cable franchising, in Ohio in 2007.

29. Because the patterns revealed by this analysis result from a decade of deliberate infrastructure investment decisions, this analysis demonstrates evidence of a policy and practice of “digital redlining” by AT&T.

IV. Redlining is Widespread in the United States and Not Unique to Cleveland

30. Several recent independent studies demonstrate that redlining against low-income communities continues to be a serious problem. Two detailed analyses of Commission data by the prestigious and independent Center for Public Integrity demonstrate that the challenges in Cleveland are not isolated cases. The Center found that, “the largest noncable internet providers collectively offer faster speeds to about 40 percent of the population they serve nationwide in wealthy areas compared with just 22 percent of the population in poor areas.”² In a nationwide analysis, the Center found “85% of people in places where the majority of households make \$80,694 or more can purchase internet access with 10Mbps or faster download speeds from

² Allan Holmes and Ben Wieder, Center for Public Integrity, “DSL providers save faster internet for wealthier communities” (Oct. 14, 2016) <https://www.publicintegrity.org/2016/10/14/20341/dsl-providers-save-faster-internet-wealthier-communities>

AT&T, in areas it serves, whereas 69% of people living in places where the majority of households make less than \$34,783” can do the same.³

31. While carriers justify these disparities based on ostensibly logical differences, such as the density of a population, which impacts the cost of broadband deployment, the Center found “even controlling for population density, the rural poor are still in excess of one-and-a-half times as likely to lack high-speed broadband as rural wealthy families” and “in urban areas where 94 percent of households have access, low-income families are three times as likely to lack access as the wealthiest urban families.”⁴

32. Further, in a report issued this December, a detailed analysis of national broadband adoption data concluded, that many non-white racial and ethnic groups continue to lag behind Whites in home-internet adoption even after accounting for differences in income, age, education, and other factors. The report concluded, “racial discrimination contributes to the digital divide.”⁵ A study of AT&T’s deployment in California drew similar conclusions, high-speed fiber services are deployed disproportionately to the highest-income neighborhoods.⁶

LEGAL ANALYSIS

I. No Unjust or Unreasonable Discrimination or Practices.

³ Id.

⁴ Allan Holmes, et al., Center for Public Integrity, “Rich people have access to high-speed Internet; many poor people still don’t,” (May 12, 2016) <https://www.publicintegrity.org/2016/05/12/19659/rich-people-have-access-high-speed-internet-many-poor-people-still-dont>.

⁵ S. Derek Turner, Digital Denied (Free Press: December 13, 2016), https://www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf

⁶ Garret Strain et al., Haas Institute, AT&T’s Digital Divide in California, Policy Brief 2017, http://haasinstitute.berkeley.edu/sites/default/files/haas_broadband_042417-singles.pdf

33. Federal communications policy is replete with prohibitions and policies against discriminatory deployment and offerings of communications service.⁷ The Commission is charged with “regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, *to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex*, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service....” 47 U.S.C. § 151 (emphasis added).

34. Section 202 of the Communications Act provides:

It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services for or in connection with like communication service, directly or indirectly, by any means or device, or *to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.*

47 U.S.C. § 202 (emphasis added).

35. Section 201(b) of the Act states, in pertinent part, that “[a]ll charges, practices, classifications, and regulations for and in connection with [interstate or foreign] communication service [by wire or radio], shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is declared to be unlawful.” 47 U.S.C. § 201(b). The Commission has held that unfair and deceptive marketing practices by interstate common carriers, including misrepresentations about a carrier’s service constitute unjust and unreasonable practices under Section 201(b) of the Act.⁸

II. Broadband Access Internet Services Legal Treatment

⁷ For example, the 1992 Cable Act requires local franchising authorities to “assure that access to cable service is not denied to any group of potential residential cable subscribers because of the income of the residents of the local area in which such group resides.” 47 U.S.C. § 541(3). See also 47 U.S.C. § 254.

⁸ See, e.g., In the Matter of Advantage Telecommunications Corp., File No.: EB-TCD-12-00004803, NAL/Acct. No.: 201332170013, FRN: 0005077730 at paras (rel. April 25, 2017)

36. Broadband Access Internet Services (BIAS), including the DSL services subject to this complaint, are subject to Section 202. *Protecting and Promoting the Open Internet*, GN Docket 14-28, 30 FCC Rcd 5601 at paras. 331, 337 (2015). The Commission has interstate authority over broadband services because the Commission has declared it “broadband Internet access service is jurisdictionally interstate for regulatory purposes.” *Open Internet Order*, 30 FCC Rcd at 5803, para. 431. The Commission retained jurisdiction over BIAS in its *Open Internet Order* specifically because it anticipated that enforcement proceedings under Section 208 would be necessary to protect consumers. *Id.* at para 434 (citing the importance of network deployment).

III. Obligations to Deal Honestly with the Commission

37. Parties before the Commission are required to make truthful and accurate statements in its proceedings. 18 U.S.C. § 1001 (criminal perjury before federal agencies); 47 C.F.R. § 1.17 (investigatory or adjudicatory matters); 47 C.F.R. § 1.24 (ethical conduct of counsel); 47 C.F.R. § 1.52 (requiring filings to be signed and with good grounds).

IV. Standard for Determining Discrimination Under Section 202

38. Under Section 202, “[c]ourts have fashioned a three-step analysis to determine whether a carrier has violated this section. The first inquiry is whether the services are ‘like’; if they are, the next inquiry is whether there is a price difference between them; and if so, the third inquiry is whether the difference is reasonable.” *Nat’l Communications Ass’n, Inc. v. AT&T Corp.*, 238 F.3d 124, 127 (2d Cir. 2001). The burden is on the complainant to establish the first two elements. If the complainant makes this showing, the burden shifts to the carrier to justify the price disparity as reasonable. *Nat’l Communications Ass’n*, 238 F.3d at 129-133.

39. It is clear that service quality and price are inextricably linked – unjust offerings under Section 202 can be successfully brought if either the price or the product unjustly or unreasonably discriminates. *AT&T v. Central Office Tel.*, 524 US 214, 234 118 S Ct 1956 (1998). Moreover, refusing to offer a service to one customer that is offered to another customer is also a violation of Section 202. *See, e.g., In re American Trucking Asso., Inc.* 41 FCC2d 2 (1973).

40. Under the three-part test, the Commission follows a “functional equivalency” test to determine which products are “like,” which the Commission describes as follows:

This test looks to whether there are any material functional differences between the services. An important aspect of the test, as it has evolved, involves reliance upon customer perception to help determine whether the services being compared provide the same or equivalent functions. The test asks whether the services at issue are ‘different in any material respect’ and requires the Commission to examine both the nature of the services and the customer perception of the functional equivalency of the services. The test presumes that not all differences between the services make them a priori unlike. Rather, the differences must be functionally material or, put another way, of practical significance to customers.

In the Matter of Cellexis International, 16 FCC Rcd 22887, 22892 (2001).

41. The Commission has affirmed that services subject not to tariffing, but only to the nondiscrimination obligations of Section 202, must not refuse to serve people because of their race or income. In a case dealing with mobile CMRS carriers, which were not subject to specific tariffing obligations but were subject to Section 202 nondiscrimination obligations, the Commission stated clearly, and was affirmed by the D.C. Circuit, that a provider may not “refuse ‘to deal with any segment of the public whose business is the ‘type normally accepted.’ ... [And] [t]hey cannot decline “to serve any particular demographic group (e.g. customers who are of a certain race or income bracket).” *Orloff v. FCC*, 352 F.3d 415, 420 (DC Cir. 2003) (citing *Orloff v. Vodafone*, 17 FCC Rcd 8987 at 8997 (2002)). The Commission specifically noted the danger

of discrimination in a less-than-competitive market such as the one in this complaint. “If a CMRS market were inadequately competitive, or if some other market failure limited consumers’ abilities to use market forces to protect themselves, Section 202 could be implicated.” *Id.* at 8997-8998. In a similar proceeding, the Commission found, “Assuming all relevant product and geographic markets become substantially competitive, ... carriers may still be able to treat some customers in an unjust, unreasonable, or discriminatory manner. Competitive markets increase the number of service options available to consumers, but they do not necessarily protect all consumers from all unfair practices. The market may fail to deter providers from unreasonably denying service to, or discriminating against, customers whom they may view as less desirable.” *PCIA Forbearance Order*, 13 FCC Rcd at 16868, para. 23 (1998).

V. Complainants Demonstrate an Unreasonable Difference in Service

42. The instant complaint meets the complainants’ burden under the three-part test. In the case of the complainants here, AT&T offers a product that is inferior to consumers living directly adjacent to consumers that receive a high-quality service. Consumers view ADSL and VDSL2 as services which meet the same needs. Both are broadband services used to reach the Internet, stream video, and other similar needs. One product is of much lower quality than another. The only meaningful difference between these consumers is their residence in an area in the urban core of Cleveland, consisting of significantly more low-income families and people of color.

43. The difference in price between the services offered by AT&T is not relevant here because the complainants do not seek lower quality services at lower prices, they seek a higher quality service. While complainants are paying significant, potentially unjust sums, for low-

quality service, the core concern here is the complainants inability to obtain speeds and quality sufficient to meet their needs.

44. The loss of competition harms the complainants, because deployment of fiber based technology has a “positive effect on broadband competition.” *In the Matter of Applications of AT&T and DirecTV*, 30 FCC Rcd. 9131, para. 345 & n.1040 (2015) (study showed “cable market share declines by approximately 40 percent when facing competition from FTTP instead of DSL.”) The loss of competition to some consumers means those consumers do not benefit from lower prices and higher quality.

45. AT&T has been found to violate section 202 before, and is not immune from section 202 merely because its discrimination is based on investment decisions. In *Nat'l Communications Ass'n, Inc. v. AT&T Corp.*, the Second Circuit affirmed a 202 violation, in part, because AT&T had given far fewer resources to a department that serviced one set of customers than the department that served AT&T’s own customers. *Nat'l Communications Ass'n, Inc. v. AT&T Corp.*, 238 F.3d 124, 126 (2d Cir. 2001).

VI. The Commission Must Act Regardless of BIAS Title II Classification

46. The Commission has recently questioned whether broadband services should be subject to Title II of the Act. *Restoring Internet Freedom*, Notice of Proposed Rulemaking, Docket 17-108 (rel. May 23, 2017). While this complaint is ample evidence for the reasons why the Commission should retain its Title II over broadband, nonetheless the Commission possess authority no matter its future decision in that proceeding.

47. Moreover, even if the Commission were to revise its regulatory treatment of broadband service, this complaint should not be dismissed based on a future regulatory decision.

48. National policy supports “deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” and “access to advanced telecommunications and information services ... in all regions of the Nation.” 47 U.S.C. § 1302(a), 254(b)(2).

49. Section 706(a) of the 1996 Telecommunications Act directs the Commission to utilize its arsenal of tools to promote broadband deployment, including, “measures that promote competition in the local telecommunications market.” 47 U.S.C. § 1302(a).

50. The Commission is directed in Section 706 to “take immediate action to accelerate deployment of [advanced telecommunications] capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market.” 47 U.S.C. § 1302(b).

51. The Commission has authority here because the courts have affirmed the Commission’s conclusion that Section 706 contains an operative grant of authority. *Verizon v. FCC*, 740 F.3d 623, slip. Op 20-22 (D.C. Cir. 2014); *see also United States Telecom Ass’n v. FCC*, 825 F.3d 674 (D.C. Cir. 2016).⁹

52. The Commission is authorized under Section 706 because complainants do not seek in this case sweeping common carrier regulation, but rather a finding that advanced telecommunications capabilities have not been deployed to low income neighborhoods in Cleveland, OH in contravention of Section 706.

53. Section 706 is therefore directly applicable to the deployment of advanced services to all Americans, and thus grants direct authority for the Commission to act.

VII. The Commission Should Initiate an Investigation Pursuant to Section 403.

⁹ *Comcast v. FCC*, 600 F.3d 642 (D.C. Cir. 2010), is not relevant here because the Commission has now revisited its previous position which concluded that Section 706 was not a grant of authority.

54. Under Section 403, the Commission has sweeping authority to “institute an inquiry” pursuant to an authorized complaint relating to the enforcement of Commission rules. 47 U.S.C. § 403.

RELIEF REQUESTED

55. Complainants request that the Commission: (a) find that Defendant AT&T has violated Section 202, 254 and 706 of the Act, 47 U.S.C. § 202, 254, 1302, by failing to serve the low-income, communities of color in Cleveland, Ohio, and as such, issue preliminary and permanent injunctions prohibiting AT&T from engaging in the discriminatory and anticompetitive conduct and practices alleged herein, and (b) find that AT&T has violated Sections 202, 254 and 706 of the Act, codified at 47 C.F.R. §1302, 47 U.S.C. §§ 202, 254 and 1302, by failing to deploy broadly, and thereby direct specific performance of AT&T’s obligations, including but not limited to AT&T’s obligation to provide broadband services to the lower income minority communities in Cleveland, Ohio.

56. Complainants seek a hearing on the amount of damages in a separate proceeding per a supplemental complaint per Commission Rule 1.722. 47 C.F.R. § 1.722.

57. If the Commission is unwilling at this time to proceed through an adjudication, it should refer the matter to the ALJ for a public hearing under 47 U.S.C. §403.

58. Complainants request all other such relief as may be just and proper.

CONCLUSION

For the reasons set forth above and in the Formal Complaint, the Commission should grant Complainants the relief they have requested.



Daryl Parks
Parks & Crump
240 North Magnolia, Drive
Tallahassee, Florida, 32301

(850) 222-3333
(850) 224-6679 (fax)

*Counsel for Joanne Elkins, Hattie
Lanfair and Rachelle Lee*

Dated: August 23, 2017

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of)	
)	
Joanne Elkins, Hattie Lanfair,)	
Rachelle Lee)	
Complainants,)	Proceeding Number _____
)	File No. EB- _____ -
v.)	
)	
AT&T Corp.)	
Defendant.)	
)	

INFORMATION DESIGNATION

Joanne Elkins, Hattie Lanfair, and Rochelle Lee, hereby submit this information designation in accordance with Sections 1.721(a)(10)(i), (ii), (iii), and 1.721(a)(11) of the Federal Communications Commission’s (“Commission”) Rules, 47 C.F.R. §§ 1.721(a)(10)(i), (ii), (iii) and 1.721(a)(11), and 1.724(f)(2), and 1.726(d)(2).

Individuals Believed to Have First-Hand Knowledge, Rule 1.721(a)(10)(i)

Pursuant to Section 1.721(a)(10)(i) of the Commission’s Rules, 47 C.F.R. § 1.721(a)(10)(i), set forth below are the names, addresses, and positions of the individuals who have first-hand knowledge of facts alleged with particularity in this Formal Complaint, and a description of the facts within any such individual’s knowledge.

Joanne Elkins of 1423 East 85th Street, Cleveland, Ohio, 44106; Hattie Lanfair of 12721 Iroquois Avenue, Cleveland, Ohio and Rochelle Lee of 2270 73rd St, Cleveland, Ohio 44103;

are residents in the AT&T Cleveland service area with combined first-hand experience as AT&T customers of over 40 years.

For example, Elkins has less than 2mg speed and as a result, can attest to not being able to download anything and having attempts to download and upload drop and stall out due to the slow speed. Lanfair contacted attorney Daryl Parks after complaining directly to AT&T over a year and seeing the NDIA report in the news. She has known him personally for over 20 years. Her son and Mr. Parks attended Florida A&M together and therefore is confident he could get results after her attempts to get them from AT&T failed. Ms. Lee's home has less than 8 mg speed and she can attest to the extreme slow lag in service.

Documents, Data Compilations, and Tangible Things, Rule 1.721(a)(10)(ii)

Pursuant to Section 1.721(a)(ii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(ii), and the Commission's May 18, 2017 order granting AT&T's request for a waiver in connection with that provision, AT&T states that, in lieu of the requirements of stated in Rule 1.721(a)(1)(ii), AT&T is relying on the Exhibits submitted with its Formal Complaint. See Documents Relied Upon pursuant to Rule 1.721(a)(11), *infra*.

Identification of Persons and Documents, Rule 1.721(a)(10)(iii)

Pursuant to Section 1.721(a)(10)(iii) of the Commission's Rules, 47 C.F.R. § 1.721(a)(10)(iii), Joanne Elkins, Hattie Lanfair and Rochelle Lee provides that this information designation was prepared by their counsel Daryl Parks of Parks and Crump,

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of)	
)	
Joanne Elkins, Hattie Lanfair,)	
Rachelle Lee)	
Complainants,)	Proceeding Number _____
)	File No. EB- _____ -
v.)	
)	
AT&T Corp.)	
Defendant.)	
)	

**JOANNE ELKINS, HATTIE LANFAIR AND ROCHELLE LEE’S FIRST REQUEST
FOR INTERROGATORIES OF AT&T CORP**

Pursuant to 47 C.F.R. § 1.729(a), Complainants Joanne Elkins, Hattie Lanfair and Rochelle Lee (Residents) hereby submit to the Federal Communications Commission, and concurrently serves on Defendant AT&T Corp (“ATT”), this First Request for Interrogatories (“Interrogatories”). AT&T shall respond to these Interrogatories in the time provided by 47 C.F.R. § 1.729, in writing, under oath, and in accordance with the Commission’s rules and the Instructions and Definitions set forth herein.

DEFINITIONS

1. All terms used herein shall be construed according to common understood definition of the terms and not in complex or highly technical terms, though acronyms and other terms of art in

the telecommunications industry shall have the meaning typically ascribed to them by the industry.

2. “Any” means each, every, and all persons, places, or things to which the term refers.

3. “Communication” means any transfer of information, whether written, printed, electronic, oral, pictorial, or otherwise transmitted by any means or manner whatsoever.

4. “Concerning” means relating to, involving, reflecting, identifying, stating, referring to, evidencing, constituting, analyzing, underlying, commenting upon, mentioning, or connected with, in any way, the subject matter of the request.

5. “Copy” means any reproduction, in whole or in part, of an original document and includes, but is not limited to, non-identical copies made from copies.

6. “Describe” and “description” means to set forth fully, in detail, and unambiguously each and every fact of which you have knowledge related to answering the interrogatory.

7. “Document” means any written, drawn, recorded, transcribed, filed, or graphic matter, including scientific or researchers’ notebooks, raw data, calculations, information stored in computers, computer programs, surveys, tests and their results, however produced or reproduced. With respect to any document that is not exactly identical to another document for any reason, including but not limited to marginal notations, deletions, or redrafts, or rewrites, separate documents should be provided.

8. “Identify,” “identity,” or “identification,” when used in relation to “person” or “persons,” means to state the full name and present or last known address of such person or persons and, if a natural person, his or her present or last known job title, the name and address of his or her

present or last known employer, and the nature of the relationship or association of such person to you.

9. “Identify,” “identity,” or “identification,” when used in relation to “document” or “documents,” means to state the date, subject matter, name(s) of person(s) that wrote, signed, initialed, dictated, or otherwise participated in the creation of the same, the name(s) of the addressee(s) (if any), and the name(s) and address(es) (if any) of each person or persons who have possession, custody, or control of said document or documents.

10. “Identify” when used in relation to a “communication” means to identify the participants in each communication and, if such communication is not contained in a document, the date, place, and content of such communication.

11. “Including” means including but not limited to.

12. “Original” means the first archetypal document produced, that is, the document itself, not a copy. 15. “Person” or “persons” means any natural person or persons, group of natural persons acting as individuals, group of natural persons acting as a group (e.g., as a board of directors, a committee, etc.), or any firm, corporate entity, partnership, association, joint venture, business, enterprise, cooperative, municipality, commission, or governmental body or agency.

13. “Relevant Period” means 2006, to the present, unless otherwise specified.

14. “You,” “your,” or “AT&T” means AT&T Corp any of its parent, affiliated, or subsidiary companies; and employees, officers, directors, agents, representatives, and all other persons or entities acting or purporting to act on their behalf, including without limitation any outside consultant or witness retained by them. In that regard, each and every interrogatory contained herein is directed at you.

INSTRUCTIONS

When responding to the following interrogatories, please comply with the instructions below:

1. Each interrogatory is continuing in nature and requires supplemental responses as soon as new, different, or further information is obtained that is related to answering the interrogatory.
2. Provide all information, including all documents, related to answering the interrogatory that are in your possession, custody, or control, regardless of whether such documents are possessed directly by you or by your employees, officers, directors, agents, representatives, or any other person or entity acting or purporting to act on their behalf.
3. In any interrogatory, the present tense shall be read to include the past tense, and the past tense shall be read to include the present tense.
4. In any interrogatory, the singular shall be read to include the plural, and the plural shall be read to include the singular.
5. In any interrogatory, the use of the conjunctive shall be read to include the disjunctive, and the use of the disjunctive shall be read to include the conjunctive.
6. Any document withheld from production on the grounds of a privilege is to be specifically identified by author(s), addressee(s), length, and date, with a brief description of the subject matter or nature of the document, and a statement of the privilege asserted.
7. Please begin the response to each request on a separate page.
8. Please restate each interrogatory before providing the response or objection.

9. Please specify the interrogatory in response to which any document, narrative response, or objection is provided. If a document, narrative response, or objection relates to more than one request, please cross reference.
10. For each separate interrogatory, identify the person(s) under whose supervision the response was prepared.
11. For any interrogatory consisting of separate subparts or portions, a complete response is required to each subpart as if the subpart or portion were propounded separately.
12. Produce any documents in the form of legible, complete, and true copies of the original documents as “original” is defined herein. To the extent that excel spreadsheets are produced, they should be provided in native format.
13. Please provide all documents in their native format, together with all metadata.
14. If you assert that documents or information related to answering an interrogatory are unavailable or have been discarded or destroyed, state when and explain in detail why any such document or information was unavailable, discarded, or destroyed, and identify the person directing the discarding or destruction. If a claim is made that the discarding or destruction occurred pursuant to a discarding or destruction program, identify and produce the criteria, policy, or procedures under which such program was undertaken.
15. If any interrogatory cannot be answered in full after reasonable inquiry, provide the response to the extent available, state why the interrogatory cannot be answered in full, and provide any information within your knowledge concerning the description, existence, availability, and custody of any unanswered portions.

INT REQUEST 1. Share the cost and demand forecast modeling used to determine which neighborhoods in Cleveland OH received VDSL service and/or Fiber to the Home (FTTH).

EXPLANATION

To the extent that AT&T has claimed that it has selected certain neighborhoods to serve based on cost and demand, providing this information is essential for complainants to ascertain why their homes were omitted.

INT REQUEST 2. Provide all marketing of broadband services which targets African American, Hispanic, Asian and other communities of color and low-income communities in Cleveland and the state of Ohio.

EXPLANATION:

AT&T expressed to the Commission a commitment to serve all communities including those in service areas with high concentration of people of color; and therefore it is important that complainants learn how, if at all, others in their neighborhoods and communities became aware of services and products offered by AT&T.

INT REQUEST 3. Provide how AT&T determines what the average data usage is for various broadband functionality, such as email, streaming movies, internet browsing, music, and gaming.

EXPLANATION

AT&T asserts that it must manage its network efficiently and therefore, it must have established a benchmark or certain standards to determine the amount of usage expended by the average users, high bandwidth users and less active users. Complainants seek access to certain services and must know this information in order to ascertain whether they were properly assessed or perhaps incorrectly assessed because AT&T's knowledge and awareness of their needs are not matched with their actual needs.

INT. REQUEST 5=4 Provide racial and ethnic breakdown of AT&T customers nationwide, Ohio and Cleveland, broken down by municipality or service area.

EXPLANATION

This complaint is based on recently published data by NDIA that suggests AT&T is purposefully bypassing residents by ethnic and racial characteristics and in order to determine if there is corroboration of fact in this data, Complainants would require access to this data that AT&T presumably has in its possession.

INT. REQUEST 5 Provide marketing budget directed toward African American, Hispanic, Asian and other communities of color and low-income communities in Cleveland, the state of Ohio, and nationally. Include aggregate marketing budget, in particular, the percentage of the total budget targeting communities of color.

EXPLANATION

AT&T states that it serves the city and it creates marketing materials and advertising in the city to promote services and offerings. Complainants require awareness of the amount of money spent on marketing because that will assist it in determining if the company's outreach spend and effort is adequate given the Complaints concerns about non-ubiquitous adoption. If the problem has to do with marketing, then making the marketing budget available will assist the Complainants and the Commission better understand.

INT. REQUEST 6. Provide total participation rates in AT&T's Access program in Ohio, Cleveland and nationally. Provide all demographic information, including income, race and ethnicity, of participants.

EXPLANATION:

AT&T's program is stated to serve underserved and unserved communities and therefore a breakdown of the demographics of these communities is essential for ascertaining if it is meeting its stated purpose. If Complainants could access this information, they would have a better understanding of AT&T's stated goals of servicing the city.

INT. REQUES 7. Provide cost, service tiers, data limitations, costs per line, tethering and hot spot policies for mobile broadband products offered in the state of Ohio and Cleveland.

EXPLANATION:

To the extent that some members of the Cleveland service area rely on mobile broadband access, Complainants are eager to learn what AT&T's costs, limits and policies are for providing this alternative to Ohio and Cleveland residents that do not have access to terrestrial broadband.

INT. REQUEST 8 Share data regarding the total number of consumer complaints in Cleveland, OH, about the speed of broadband, the geographic location of those complaints, the resolution of those complaints from January 2006 to Present.

EXPLANATION

AT&T is bound by its franchise agreements, its FCC public service obligations and customer service provisions of both to monitor, intake and resolve customer complaints. Complainants would benefit from learning what the process is generally, for AT&T. This information is most likely in the custody of AT&T and providing it would aid the Commission in determining if there are other similarly-situated residents who have put AT&T on notice of their concerns prior to the filing of this Complaint.

INT REQUEST 9 Please provide a listing of all higher income areas in the Cleveland metropolitan area where broadband speeds of the following levels are offered, and AT&T's definition of income: 1.5 Mbps or less; 3 Mbps or less; 6 Mbps or less; 18 Mbps or less; 24 Mbps or less.

EXPLANATION:

The report that spawned and initiated Complainants to file their concerns with the Commission did not identify with more specificity which areas by income have what level of broadband speed access. AT&T is the custodian of this information and if it provides it on the record, the Complainants and the Commission would get a more complete picture of the service demographic by access.

INT REQUEST 10 Current plans to deploy fiber in Cleveland and in the state of Ohio.

EXPLANATION:

To the extent that AT&T has already indicated to the public and the Commission that it intended to deploy fiber in Cleveland and the state of Ohio, it is essential to know whether it has completed its build out or has plans to deploy further.

CERTIFICATE OF SERVICE

I hereby certify that on this date I served a copy of Complainant's Complaint, hand delivery by courier to :

AT&T Corp
208 S. Akard Street,
Dallas, Texas 75202



Daryl Parks
Parks & Crump
240 North Magnolia, Drive
Tallahassee, Florida, 32301

(850) 222-3333
(850) 224-6679 (fax)

*Counsel for Joanne Elkins, Hattie
Lanfair and Rochelle Lee*

Dated: August 23, 2017

1. My name is Joanne Elkins; I live at 1423 East 85th Street, Cleveland, OH 44106.
2. I am a residential customer of AT&T. I have purchased broadband service from AT&T since 2009. I received broadband service initially through DSL, followed by Broadband U-Verse. I currently pay \$22.00 a month for this service.
3. I would prefer to purchase faster access to the Internet. I have unsuccessfully attempted to obtain better high-speed broadband service from AT&T. Over the years, I have called repeatedly to complain. Servicemen have responded to house calls and the equipment inside my home has been replaced several times. On more than one occasion AT&T measured speed, signal and replaced my box, all to no avail. Recently, on August 18, 2017, with the hope of increasing my Internet speed, I called to inquire about an upgrade to my service. The agent informed me that an upgrade in speed or service is not available to me because of the area that I lived in. To say that I was disappointed is an understatement. I am a four-minute drive from The

Cleveland Clinic and two-minutes drive from the VA Hospital. For me not to have the infrastructure in place to support faster Internet service means that someone made a conscious decision not to build out service in my community; because I am sure those facilities and the area around them have the access they need.

4. I asked the agent to verify the service and speed that I am currently subscribed to. She informed me that my Basic Internet U-Verse speed is 1.5 Mbps.... Less than 2Mbps?? That is utterly ridiculous.

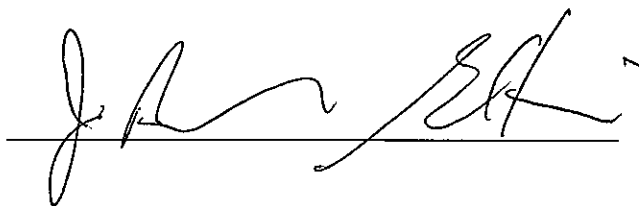
5. I suffer many hardships and consequences due to AT&T's failure to offer me faster high-speed broadband service. 1.) My vision is significantly impaired and continues to weaken. There are several ophthalmology telemedicine services that provide access to specialist, eye-exams, and screenings without me ever having to leave the comfort of my home. Unfortunately, I am unable to take advantage of those services because my Internet service cannot support it. 2.) A few years back, I purchased and installed over \$1500 of security equipment for my house. I have eight cameras strategically placed and active to protect my home. The security system has monitoring features that could allow me to check the perimeter and security of my house from my tablet or computer at anytime. Despite the investment I've made to secure my home, protect my loved ones and myself, we are still at risk. The lack of adequate broadband service denies me the opportunity to take full advantage of my remote security system. 3.) Not knowing or understanding that many of my technical issues were caused by low-speed broadband, I lost the money that I spent on a computer. I continuously had problems with it, I kept thinking it was a virus or dated software when all the while it was the broadband and signal problems. I eventually gave the computer away 4.) I want to mention a few general disadvantages. I have grandchildren who enjoy watching videos and movies online,

they cant do that at grandma's house. I am not able to face time or Skype with them or anyone else because of my Internet service. Unlike most people that can quickly download documents and books, I am forced to travel to the library or stores that provide Internet services to take care of simple tasks. It is not fair. 5.) Lastly, I am 69 years old. AT&T is the fabric of my life.

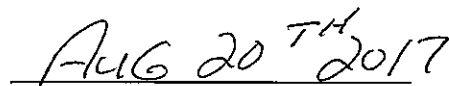
Starting with Ohio Bell, I worked for AT&T for most of my adult life. I retired with over 30 years of service to the company. Although I am suffering from the company's failure to deploy adequate coverage to my home and certain communities, I still believe in the brand. I am really hoping this is just an oversight of key decision makers because this is not the AT&T I remember. My AT&T cared about everybody. People ask, "Why haven't you switched companies?" ... My response, "because I trust the company to do the right thing.." I firmly believe that when the right people are notified the issues will be fixed. AT&T will eventually get it right.

6. This Declaration has been prepared in support of the foregoing Formal Compliant.

7. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

A handwritten signature in black ink, appearing to read 'Joanne Elkins', written over a horizontal line.

Joanne Elkins

A handwritten date 'Aug 20th 2017' in black ink, written over a horizontal line.

Date

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of

Rochelle Lee, Hattie Lanfair,
Joanne Elkins

v.

AT&T Corp.
One AT&T Way
Bedminster, NJ 07921

Proceeding Number _____
File No. EB- _____ -

DECLARATION OF ROCHELLE LEE

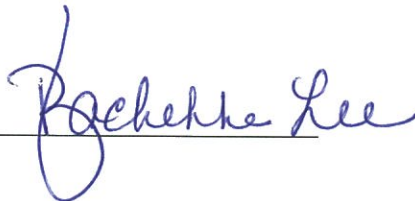
1. My name is Rochelle Lee, I live at 2270 East 73rd St., Cleveland, Ohio 44103.
2. I am a residential customer of AT&T. I have been a customer of AT&T for over 20 years.
3. I would prefer to purchase faster access to the Internet. I attempted to obtain faster high-speed broadband service from AT&T but was not able to purchase it because upgrades are not available in the Central Fairfax area of Cleveland, which is the neighborhood that I live in.
4. I am harmed by the failure of AT&T to offer me fast high-speed broadband service in many ways. In general, it affects my everyday life. As an early childhood educator, I lack the ability to conduct day-to-day research on the computer. Participating in blogs or surfing on websites that have many images is a very difficult task because it takes so long to download

certain pages and videos. Additionally, it is unfortunate that my grandchildren are not able to enjoy streaming movies and videos when they are at my house. I could go on and on, but I am not because it pointless. AT&T knows the benefits of high-speed broadband and they know that they have deliberately denied us of those benefits. It makes me so angry to know that a company that I have stuck with for so many years would think so little of my community and me. I read in a recent report that AT&T did not see enough return on their investment to place the proper infrastructure in certain low-income communities. In their eyes, or business plan, we were not worth the investment! Well, what about the return on OUR investments? What about the future of my grandkids and the children in my community? We live in a digital age where the dependency on high speed broadband continues to increase. If these issues are not fixed now generations of young minority kids will be left behind to define a new dark age. Why should a child in Cleveland's inner city receive anything less than a child in the suburbs? The answer is easy... they should not. I have worked most of my life to ensure a better tomorrow for children. I cannot and will not stop now. AT&T must do better.

5. This Declaration has been prepared in support of the foregoing Formal Complaint.

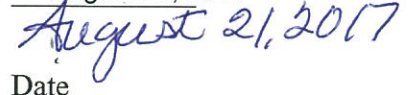
6. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

RACHELLE LEE

A handwritten signature in blue ink that reads "Rochelle Lee". The signature is written over a horizontal line.

Rochelle Lee

August 21, 2017

A handwritten date in blue ink that reads "August 21, 2017". The date is written over a horizontal line.

Date

Before the
Federal Communications Commission
Washington, DC 20554

In the matter of)	
)	
Rachelle Lee, Hattie Lanfair,)	
Joanne Elkins)	
)	Proceeding Number _____
)	File No. EB- _____ -
v.)	
)	
AT&T Corp.)	
One AT&T Way)	
Bedminster, NJ 07921)	
)	

DECLARATION OF EXPERT WITNESS
BRIAN E. WHITACRE

1. My name is Dr. Brian Whitacre. I am a professor and extension economist in the agricultural economics department at Oklahoma State University.

2. I hold a Ph.D. in economics from Virginia Polytechnic Institute. For the last 11 years, my academic position has focused on what technology can mean for domestic economic development. A heavy portion of my research (and outreach) is dedicated to the economic impacts associated with broadband technology. Therefore, I am well-versed in the data and software tools used to explore broadband provision across the United States. Attached is my resume detailing my professional expertise.

3. I have reviewed in detail and am familiar with the contents of the Connect Your Communities and National Digital Inclusion Alliance report titled, *AT&T's Digital Redlining*. In my professional opinion, the report is accurate and has been conducted according to the

professional standards of my profession. As part of my work on this project, I was able to replicate the report results using the publicly available datasets cited (FCC Form 477 from June 2016; Census poverty rates from the 2011-2015 ACS).

4. The report demonstrates that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high poverty rates, relegating them to Internet access services which are vastly inferior to the services enjoyed by their counterparts nearby in the higher-income Cleveland suburbs.

Background

5. In 2016, Connect Your Community and National Digital Inclusion Alliance learned that residents of many Cleveland neighborhoods were being declared ineligible for AT&T's "Access" discount rate program, solely because they couldn't get AT&T connections at the 3 Mbps download speed which was then the program's minimum requirement.

6. AT&T Access offers discounted broadband service to low-income households, and was adopted by AT&T as a voluntary condition as part of Federal Communication Commission approval of its merger with DirecTV.

7. In order to further explore the quality of service offerings by AT&T in Cleveland, CYC and NDIA undertook an analysis of broadband infrastructure deployment in Cleveland using census block level data submitted to the Federal Communications Commission by AT&T via FCC Form 477.

Data Source and Study Goals

8. The FCC's Fixed Broadband Deployment Data is based on Form 477 reports gathered every six months from all regulated Internet Service Providers. It's released to the

public on the FCC website six months to a year later. Among other things, the Form 477 deployment data includes individual companies' own accounts of the broadband technology they're using to deliver residential service in each Census block, and the "Maximum Advertised Download Speed" (as well as Upload Speed) for each such technology in that block.

9. In the case of AT&T, Form 477 block data shows where the company is offering 18, 24, 45 or 75 mbps download speeds via fiber-enhanced VDSL service, or even gigabit speeds via Fiber To The Home (FTTH), and where their Internet service is limited to slower speeds (often much slower) because it's still delivered over copper wires from a "central office" that may be miles away, using a version of old-style ADSL technology called ADSL2.

10. Census block data in Form 477 lists the maximum speed of as few as one or two addresses in a block. Therefore if a Census block is listed as ADSL2 "Maximum Advertised Download Speed" of 18 mbps, it is impossible to assume that every household in that block can get that speed.

11. On March 3, the FCC posted its latest round of Census block broadband deployment data, drawn from providers' Form 477 reports for June 2016. The CYC/NDIA analysis is based on that most recent release.

12. CYC and NDIA undertook this analysis to learn what the new Form 477 Census block data tell us about three questions: 1) Where has AT&T invested in providing its mainstream Internet speeds and video services to residents, and where has it chosen not to do so? 2) How does AT&T's deployment of FTTH/VDSL service compare to the distribution of high poverty areas, especially in Cleveland? 3) Where are AT&T's "maximum advertised download speeds" still provided by ADSL2 technology – i.e. old-style copper wire from a "central office"

– and what are those speeds, especially in the Census blocks farther away from the central offices serving them?

13. To address the first two questions, CYC and NDIA mapped all the Census blocks in Cuyahoga County where AT&T's Form 477 data indicates it was able to provide Internet access via VDSL technology to at least one household, at a maximum download speed of 18 mbps or more, in June 2016. (CYC and NDIA included a couple of blocks where the data show FTTH service with 1 Gbps download speeds.) Then CYC and NDIA overlaid a map of all the Census block groups in the county where 35% of residents had incomes below the poverty line according to the most recent Census data available (from 2011-2015).

AT&T home broadband technologies

14. In general, AT&T offers home Internet, “cable” TV programming and IP phone services using one of three delivery technologies: Fiber To The Home, Fiber To The Node / VDSL, and ADSL2.

15. The newest and fastest of the three, not yet available in most of the Cleveland market but coming on rapidly in other metros, is Fiber To The Home (FTTH) – now branded as “AT&T Fiber”. As the name suggests, this is very fast service (typically up to 1,000 mbps, i.e. 1 gbps) delivered by optical fiber all the way to the customer premises.

16. The current mainstream AT&T home network technology, built out in Ohio and other markets between 2007 and 2014, is Fiber To The Node (FTTN). Data travels via fiber to a “Video Ready Access Device” (VRAD) in a wiring cabinet in a neighborhood, often on a tree lawn or similar location, and then from the VRAD to the customer premises via a copper loop. AT&T's FTTN system uses an advanced digital subscriber line technology called “Very-high-bit-rate digital subscriber line” or VDSL. VDSL technology can transmit data downstream and

upstream simultaneously, at speeds of 100 mbps or more. AT&T's Form 477 data lists "maximum advertised download speeds" for VDSL service of 18, 24, 45, and 75 mbps.

17. Where AT&T hasn't upgraded its service to either FTTH or FTTN, new accounts are served using an older technology called "asymmetric digital subscriber line 2" (ADSL2 or ADSL2+). Data travels to an AT&T "central office" via fiber optics, is run through a "Digital Subscriber Line Access Multiplexer" (DSLAM) there, and then is sent over a copper loop to the customer premises – often a distance of two to three miles or more. The ADSL2 technology used by AT&T has a maximum download speed of 18 to 24 mbps near the DSLAM, but drops rapidly to 6 mbps, 3 mbps or less at distances above a mile.

18. I and the study authors understand, and believe to be true, that AT&T categorizes its "advertised speeds" as follows. AT&T's three lowest advertised speed tiers — and price levels — are now "up to 3 mbps", "up to 6 mbps", and "up to 24 mbps." A service whose maximum speed is 768 kbps is considered "up to 3 mbps" under AT&T's rubric. If a customer's available download speed is really 12 mbps, under AT&T's rubric, that service is considered "up to 24 mbps" on that customer's bill.

Consumer Use of Broadband and Benefits of Broadband Competition

19. Consumers view ADSL and VDSL2 as services which meet the same needs. Both are broadband services used to reach the Internet, stream video, and other similar needs. Both offerings also compete with other providers of broadband services, such as wired services offered by multichannel video programming distributor, *i.e.*, traditional cable operators.

20. Wireless broadband services, while they provide some similar access to broadband services, are qualitatively different from wired services. Indeed, the FCC's own 2016 Broadband Progress Report notes, "We find today that fixed and mobile broadband are often

used in conjunction with one another and, as such, are not functional substitutes.” (p. 6) The report also finds that, “fixed and mobile broadband are currently tailored to serve different consumer needs.” (p. 6) Wireless services are typically subject to data caps or limitations after a particular data threshold is met, and typically must be purchased for each device used, rather than shared like wired services. They also suffer noticeable reductions in speed and quality if multiple devices share the same data stream, such as through a mobile wifi hotspot. Therefore, mobile services are often much more expensive and slower than wired services and do not offer as great a value, particularly for low-income consumers.

21. The lack of competitive fiber-based products reduces competition in the provision of broadband services. Therefore, communities and individual customers who are limited to fixed broadband service offerings from only a single provider generally face higher prices and lower quality than they would if more than one provider of services were available. The problematic nature of limited broadband competition is firmly established in the economic literature.

Analysis

22. The resulting study, *AT&T's Digital Redlining*, its analysis, methodology, maps and conclusions, is attached and incorporated to this declaration by reference.

23. As detailed below, the study offers clear evidence that AT&T has withheld the standard product offering for most suburbs- its fiber-enhanced “Fiber To the Node” VDSL infrastructure (“FTTN”)– from the overwhelming majority of census blocks with individual poverty rates above 35%. As a consequence, residents of these neighborhoods: suffer uneven, often severely limited Internet access , in many cases 3 mbps downstream or less, and also lack

access to AT&T's competitive fiber-enabled video service and the benefits such competition and service would bring.

Maps, Data Analysis, and Findings

24. To support these conclusions the report analyzed data and produced a series of maps demonstrating the following:

25. Map 1: Cuyahoga County Census blocks with AT&T VDSL or FTTH at maximum advertised download speeds of 18 mbps or more, June 2016 | Block groups with 35% or greater poverty. Map 1 is available in the report on page 3 and online at https://digitalinclusion.carto.com/viz/ed6fbbba-0052-11e7-997a-0e3ebc282e83/public_map. AT&T's FTTN network covers most of Cuyahoga County but not most Census blocks in Cleveland, especially those in high-poverty neighborhoods.

26. Map 2: Cleveland Census blocks with AT&T VDSL or FTTH at maximum advertised download speeds of 18 mbps or more, June 2016 | Block groups with 35% or greater poverty | City of Cleveland VRAD Permits. Map 2 is available in the report on page 3 and online at https://digitalinclusion.carto.com/viz/0a770a2e-00e4-11e7-bf2d-0e3ebc282e83/public_map. AT&T's FTTN network buildout in the city of Cleveland was concentrated in middle-income neighborhoods, as evidenced not just by FCC data but also by City permits issued for VRAD cabinets. The buildout bypassed the entire northeast side and most of the near West Side.

27. Most of Cuyahoga County's suburban communities are fully covered by AT&T's mainstream FTTH/VDSL service. Most of the city of Cleveland is not.

28. Not counting vacant industrial blocks and Hopkins airport, the new Form 477 data lists 13,457 Census blocks in Cuyahoga County served by AT&T with ADSL2, VDSL, or FTTH service. Of the 5,567 blocks located in the city of Cleveland, in only 34% (1,904) is the

Maximum Advertised Download Speeds provided by VDSL or FTTH. Of the 7,890 blocks in the rest of the county, the FTTH/VDSL percentage is 61%.

29. Within the city, the Census blocks served by AT&T's FTTN/VDSL infrastructure — those where neighborhood fiber and VRAD cabinets have been deployed — are concentrated in relatively middle-income neighborhoods in the far Southwest and Southeast sides, Old Brooklyn, the outermost blocks of North Collinwood, Shaker Square, etc. Except for that sliver of North Collinwood, there's not a single VRAD location in the entire northeast quadrant of the city — in Central, Fairfax, Hough, Glenville, St. Clair-Superior, or South Collinwood. No FTTN infrastructure has been installed in Buckeye-Woodland, Union-Miles, Detroit-Shoreway, Ohio City, Stockyards or Clark-Fulton.

30. There is a glaring correlation between areas where AT&T has not invested in FTTN service and areas of high poverty.

31. Map 3: Cleveland Census blocks with AT&T VDSL or FTTH at maximum advertised download speeds of 18 mbps or more, June 2016 | Block groups with 35% or greater poverty | AT&T Central Office. Map 3 is available in the report on page 3 and online at <https://digitalinclusion.org/wp-content/uploads/2017/03/att-cleveland-central-offices.png>.

AT&T apparently chose not to install FTTN infrastructure anywhere in the areas served by its four Cleveland central offices with the greatest concentration of high-poverty neighborhoods.

32. The absence of FTTN in these lower-income neighborhoods, and the overall disparity in FTTN deployment between Cleveland and the suburbs, can be traced largely to AT&T's failure to deploy FTTN anywhere in the service areas of four "central offices" (COs, or wire centers) with large lower-income customer bases: those at 6513 Guthrie, 5400 Prospect,

2130 East 107th, and 12223 St. Clair. FTTN deployment is also very limited in the service area of the CO at 7225 Broadway, which serves another high-poverty neighborhood.

33. Because AT&T hasn't chosen to invest in FTTN infrastructure in these central office service areas, their neighborhoods must depend for AT&T Internet access on ADSL2 technology — data transmitted from the central office via copper wires.

34. Map 4: Cuyahoga County Census blocks with maximum advertised AT&T fixed Internet download speeds provided by ADSL2, June 2016. Map 4 is available in the report on page 4 and online at https://digitalinclusion.carto.com/viz/04a3edea-00f5-11e7-8fde-0ee66e2c9693/public_map. Where AT&T has not deployed FTTN technology, home Internet speeds delivered by the ADSL2 network vary widely depending on proximity to a central office. Maximum download speeds of 3 Mbps or less are common.

35. Map 5: Cleveland Census blocks with maximum AT&T fixed Internet download speeds of 6 mbps or less, any technology, June 2016. Map 5 is available in the report on page 4 and online at https://digitalinclusion.carto.com/viz/b8570d4a-011d-11e7-9c8e-0ee66e2c9693/public_map. Map 5 shows the Cleveland Census blocks with maximum AT&T wireline Internet speeds of 6 Mbps or less, June 2016. As this map demonstrates, over 22% of Cleveland Census blocks were reported by AT&T to have maximum residential download speeds of 3 Mbps or less. 55% had maximum download speeds no greater than 6 Mbps. The comparable percentages for the rest of Cuyahoga County were 12% and 24%, respectively.

Conclusions

36. The analysis shows a clear and troubling pattern: A pattern of long-term, systematic failure to invest in the infrastructure required to provide equitable, mainstream Internet access to residents of the central city (compared to the suburbs) and to lower-income

city neighborhoods. Specifically, AT&T has chosen not to extend its “FTTN” VDSL infrastructure – which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Cleveland Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%.

37. The study’s results provide clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high poverty rates – including Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and others.

38. The Cleveland neighborhoods that did not receive VDSL investments have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs.

39. As a result, their residents are left with: 1) uneven, often severely limited Internet access – in many cases 3 Mbps downstream or less; and 2) no access to the competitive fiber-enabled video service that AT&T promised communities in exchange for “cable franchise reform”, i.e. the elimination of municipal cable franchising, in Ohio in 2007.

40. Because the patterns revealed by this analysis result from a decade of deliberate infrastructure investment decisions, I agree with NDIA and CYC’s conclusion that they constitute strong evidence of a policy and practice of “digital redlining” by AT&T — *i.e.* income-based discrimination against residents of lower-income urban neighborhoods in the types of broadband service AT&T offers, and in the company’s investment in improved service.

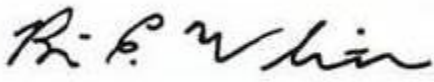
41. This Declaration has been prepared in support of the foregoing Formal Complaint.

42. This statement is true to my personal knowledge, and is made under penalty of perjury of the laws of the United States of America.

43. I certify that I was able to replicate the NDIA report findings using the publicly available data referenced in the report.

44. I declare under penalty of perjury that the foregoing is true and correct.

45. Executed on August 21, 2017.

A handwritten signature in black ink, appearing to read "R. E. Whinn". The signature is written in a cursive, flowing style.

EXPERT SIGNATURE

Brian E. Whitacre

Professor

Oklahoma State University

Department of Agricultural Economics

504 Ag Hall

Stillwater, OK 74078

Phone: (405) 744-9825

Fax: (405) 744-9835

brian.whitacre@okstate.edu

EDUCATION**Ph.D. Economics**, December 2005

Virginia Polytechnic Institute and State University (Virginia Tech), Blacksburg, VA

EXPERIENCE

June 2006 – Present

Assistant (06-11), Associate (11-16), Full Professor, Oklahoma State
Department of Agricultural Economics
62% Extension, 25% Research, 13% Teaching**REFEREED JOURNAL PUBLICATIONS** (43 total, most relevant in last 3 years shown)

Hyun Ji Lee* and **Brian Whitacre**. Forthcoming. “Estimating Willingness to Pay for Broadband Attributes among Low-Income Consumers: Results from Two FCC Lifeline Pilot Projects.” *Telecommunications Policy*. [Link](#)

Brian Whitacre. Forthcoming. “Fixed Broadband or Mobile: What Makes Us More Civically Engaged?” *Telematics and Informatics*. [Link](#)

Kelsey Conley* and **Brian Whitacre** (senior authorship shared). 2016. “Does Broadband Matter for Rural Entrepreneurs or ‘Creative Class’ Employees?” *Review of Regional Studies* 46(2): 171-190. [Link](#)

Brian Whitacre and Colin Rhinesmith. 2016. “Broadband Un-adopters.” *Telecommunications Policy* 40(1): 1-13. [Link](#)

Brian Whitacre, Sharon Strover, and Roberto Gallardo. 2015. “How Much Does Broadband Infrastructure Matter? Decomposing the Rural – Urban Adoption Gap with the Help of the National Broadband Map.” *Government Information Quarterly* 32(3): 261-269. [Link](#)

Brian Whitacre and Colin Rhinesmith. 2015. “Public Libraries and Residential Broadband Adoption: Do More Computers Lead to Higher Rates?” *Government Information Quarterly* 32(2): 164-171. [Link](#)

Brian Whitacre. 2015. “Rural Electronic Medical Record Adoption Rates Overtake Those in Urban Areas.” *Journal of the American Medical Informatics Association* 22(2): 399-408. [Link](#)

Brian Whitacre and Randi Williams*. 2015. “Electronic Medical Record Adoption in Oklahoma Practices: Rural – Urban Differences and the Role of Broadband Availability.” *The Journal of Rural Health* 31(1): 47-57. [Link](#)

Brian Whitacre, Roberto Gallardo, and Sharon Strover. 2014. “Broadband’s Contribution to Economic Growth in Rural Areas: Moving towards a Causal Relationship.” *Telecommunications Policy* 38(11): 1011-1023. [Link](#)

Brian Whitacre, Roberto Gallardo, and Sharon Strover. 2014. "Does Rural Broadband Impact Jobs and Income? Evidence from Spatial and First-Differenced Regressions." *The Annals of Regional Science* 53(3): 649-670. [Link](#)

Brian Whitacre, Terry Griffin, and Tyler Mark. 2014. "How Connected are Our Farms?" *Choices* 29(3). [Link](#)

Brian Whitacre and Lara Brooks. 2014. "Do Broadband Adoption Rates Impact a Community's Health?" *Behaviour & Information Technology* 33(7): 767-779. [Link](#)

EXTENSION PROGRAM ACTIVITIES

E-commerce Workshops / Presentations

- Hands-on workshops are at least 3 hours long and are held in a computer lab. Specific e-commerce topics include: Small Business Websites, PayPal 101, Ins and Outs of Online Storefronts, Search Engine Optimization, and Social Networking.

	2008	2009	2010	2011	2012	2013	2014	2015
Hands-on workshops								
Number	15	12	18	21	13	8	9	12
Attendance	188	184	308	236	155	90	75	115
% ranking "very useful"	86%	87%	89%	91%	91%	92%	95%	95%
In-service trainings	1	2	2	1	2	1	1	1
Extension Publications	3	2	5	1	1	1	1	1

Research / Extension Awards:

- James Whatley Award for Meritorious Research in Agricultural Sciences (2015). OSU Division of Natural Resources.
- Excellence in Regional Economic Development Work Award (2015). Stronger Economies Together (SET) National Program. For work with Western Oklahoma I-40 Corridor Team.
- Distinguished Extension / Outreach Program Award: Individual Less than Ten Years' Experience (2013). Agricultural and Applied Economics Association (AAEA).
- Outstanding Supporting Individual (2013). Great Plains Resource Conservation & Development. For work on Stronger Economies Together (SET) Program.
- Bonnie Teater Community Development Early Career Achievement Award (2011). Honors "rising star" in the field of Community Development (less than 10 years of service). Given by Southern Rural Development Center (SRDC).

TEACHING

Courses Taught and Student Ratings (last 3 years)

Oklahoma State University, Department of Agricultural Economics	<u>Rating</u>	<u># students</u>
• Rural Economic Development, Spring 2016	4.9 / 5.0, dept. avg 4.2	58
• Spatial Econometrics (1-credit - Ph.D. level) Spr. 2016	5.0 / 5.0, dept. avg 4.5	13
• Rural Economic Development, Spring 2015	3.8 / 4.0, dept. avg 3.5	50
• Spatial Econometrics (1 credit - Ph.D. level) Spr. 2014	4.0 / 4.0, dept. avg 3.6	12
• Rural Economic Development, Spring 2014	3.6 / 4.0, dept. avg 3.4	58

GRANTS

- PI or co-PI on over \$2.7M in funded grants from sources including USDA RUS, U.S. DHHS, IMLS, DEQ, SRDC, HRSA, USDA ERS, and EDA.

BY COURIER

April 24, 2017

Randall Stephenson
Chairman, CEO and President
AT&T
208 S. Akard Street
Dallas, TX 75202

Stacey Maris
Senior Vice President and Secretary
AT&T
208 S. Akard Street, Suite 3241
Dallas, TX 75202

Dear Mr. Stephenson and Ms. Maris:

Re: Redlining

We represent broadband consumers in Cleveland, Ohio (“Cleveland Broadband Consumers”) who have been and continue to be irreparably injured by AT&T’s deliberate pattern and practice of offering critical fast home broadband service disproportionately to residents of high-income zip codes, while offering only much slower and inherently inferior service to residents of low-income zip codes.

This invidious practice was copiously documented by a National Digital Inclusion Alliance (NDIA) report, “AT&T’s Digital Redlining” (March 10, 2017) (<https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/>) (last visited April 18, 2017). Excerpts of the report summary are set out below (emphasis in original):

A mapping analysis of Federal Communications Commission broadband availability data, conducted by Connect Your Community and the National Digital Inclusion Alliance, strongly suggests that **AT&T has systematically discriminated against lower-income Cleveland neighborhoods in its deployment of home Internet and video technologies over the past decade.**

Our analysis, based on newly released FCC Form 477 Census block data for June 2016, provides clear evidence that AT&T has withheld fiber-enhanced broadband improvements from most Cleveland neighborhoods with high

poverty rates – Hough, Glenville, Central, Fairfax, South Collinwood, St. Clair-Superior, Detroit-Shoreway, Stockyards and others.

This analysis is part of a six-month effort that began when CYC and NDIA learned that residents of many Cleveland neighborhoods were being declared ineligible for AT&T's "Access" discount rate program, solely because they couldn't get AT&T connections at the 3 mbps download speed that was then the program's minimum requirement.

After analyzing previous FCC Form 477 data releases, along with City construction permits and other information, we've come to believe that the ultra-slow AT&T Internet speeds available to those Access applicants reflect a larger problem: AT&T's failure to invest to upgrade most of its Cleveland network to the company's mainstream technology.

Specifically, AT&T has chosen not to extend its "Fiber To the Node" VDSL infrastructure – which is now the standard for most Cuyahoga County suburbs and other urban AT&T markets throughout the U.S. – to the majority of Cleveland Census blocks, including the overwhelming majority of blocks with individual poverty rates above 35%.

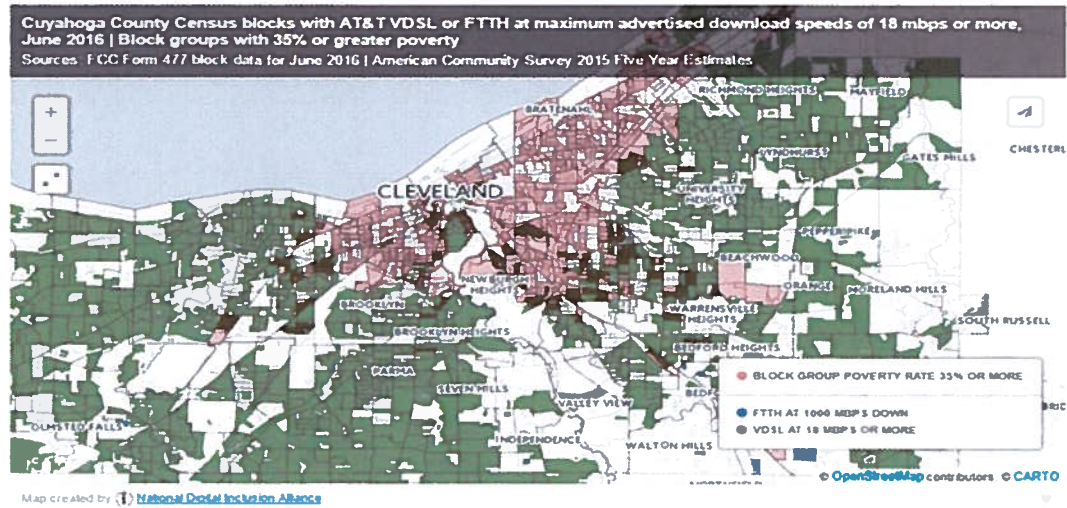
These neighborhoods have been relegated to an older, slower transmission technology called ADSL2, resulting in significantly slower Internet access speeds than AT&T provides to middle-income city neighborhoods as well as most suburbs.

As a result, their residents are left with uneven, often severely limited Internet access – in many cases 3 mbps downstream or less; and no access to the competitive fiber-enabled video service that AT&T promised communities in exchange for "cable franchise reform", *i.e.* the elimination of municipal cable franchising, in Ohio in 2007.

Because the patterns revealed by this analysis result from a decade of deliberate infrastructure investment decisions, NDIA and CYC believe they constitute strong evidence of a policy and practice of "**digital redlining**" by AT&T – *i.e.* income-based discrimination against residents of lower-income urban neighborhoods in the types of broadband service AT&T offers, and in the company's investment in improved service.

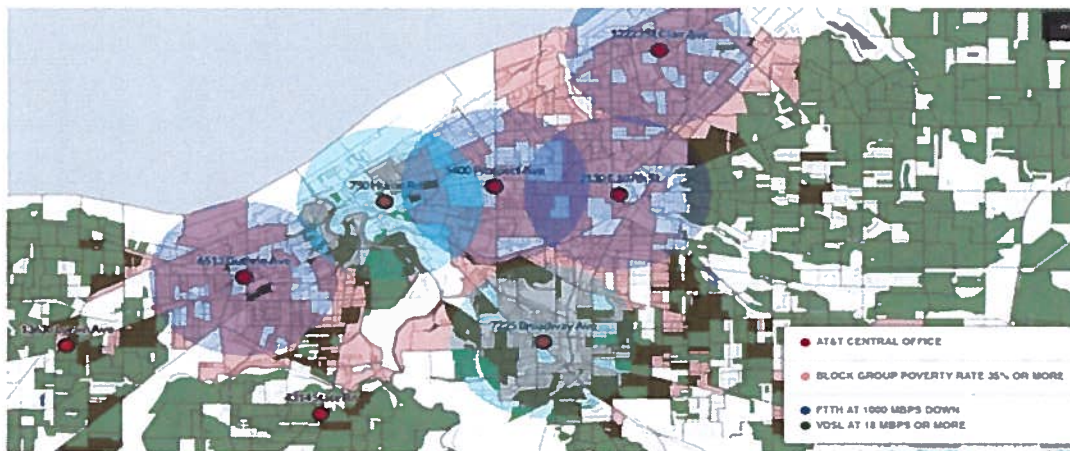
The NDIA study's maps are stunning:

MAP 1: AT&T's Fiber To The Node network covers most of Cuyahoga County but not most Census blocks in Cleveland, especially those in high-poverty neighborhoods.

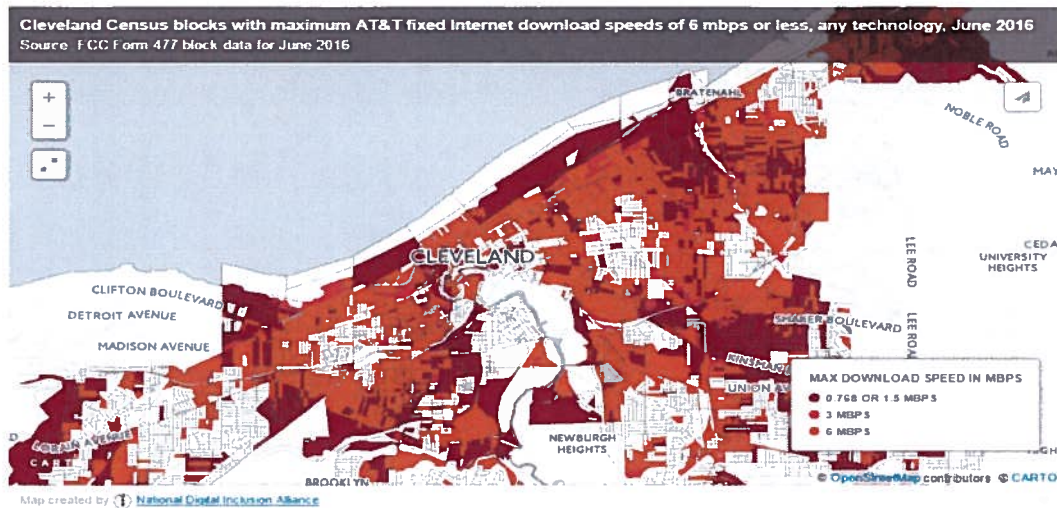


MAP 3: AT&T apparently chose not to install Fiber To The Node infrastructure anywhere in the areas served by its four Cleveland central offices with the greatest concentration of high-poverty neighborhoods.

The absence of FTTH in these lower-income neighborhoods, and the overall disparity in FTTH deployment between Cleveland and the suburbs, can be traced largely to AT&T's failure to deploy FTTH anywhere in the service areas of four "central offices" (COs, or wire centers) with large lower-income customer bases: those at 6513 Guthrie, 5400 Prospect, 2130 East 107th, and 12223 St. Clair.



MAP 5: Cleveland Census blocks with maximum AT&T wireline Internet speeds of 6 mbps or less, June 2016



See <https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/> (last visited April 19, 2017); see also https://drive.google.com/file/d/0B62ag-I_FGHrbTYtMGdK0XZ4NmM/view (last visited April 20, 2017).

They are reminiscent of maps that depicted redlining by banks, insurance companies, and ambulance services two generations ago. See <http://connectyourcommunity.org/atts-digital-redlining-of-cleveland-report/> (last visited April 18, 2017).

In his first major address, delivered at Carnegie Mellon University March 15, no less an authority than the Chairman of the Federal Communications Commission declared that the study “fiber was much less likely to be deployed in the low-income neighborhoods” (see <https://www.fcc.gov/document/chairman-pai-bringing-benefits-digital-age-all-americans> (last visited April 18, 2017)).

In response to the NDIA study, the citizen group Public Knowledge, one of the nation’s leading authorities on universal service, declared that:

Digital redlining and denying essential connectivity to low-income communities is contrary to America’s longstanding commitment to universal service and our values as a nation...These bypassed low-income neighborhoods have no options for high-speed fixed broadband service and must settle for lower speeds. As a result, families in these areas are more likely to rely on mobile broadband, which is significantly more expensive on a per GB basis.

While it is essential that broadband providers upgrade and modernize their networks to support the increasing demands of consumers and businesses, it is also imperative that they remain committed to the principles of universal service and the Network Compact.

For generations, it has been the policy of the United States that the benefits of essential connectivity should be available to all Americans, and there has long been overwhelming bipartisan consensus that part of ensuring universal service is making certain that communications services are both available and affordable. Unfortunately, it appears that those values are currently missing in AT&T's deployment in Northeastern Ohio.

See <https://www.publicknowledge.org/press-release/public-knowledge-responds-to-ndia-report-indicating-att-discrimination-in-o> (last visited April 18, 2017).

AT&T's March 12, 2017 response to the NDIA Study failed to confront the issue of redlining. Stating that the company had invested \$325 million in broadband infrastructure in Cleveland (2013-2015) and that it was "investing in technologies that will mitigate some of the infrastructure limitations" at some unspecified point in the future, AT&T virtually conceded that it redlined. *See* <http://www.news5cleveland.com/news/local-news/oh-cuyahoga/atts-digital-redlining-of-cleveland-neighborhoods> (last visited April 18, 2017).

Whether or not AT&T acted with malicious intent to hurt the poor is quite irrelevant. From the vantage point of the residents of low-income zip codes, their AT&T broadband service deficiency is no different than if they were struck by an errant AT&T bucket truck on the highway, or deprived of AT&T telephone service because the aging copper wires failed in a storm. Whether or not AT&T set out deliberately to injure them, they were injured nonetheless.

As a common carrier for over 100 years, AT&T is accustomed to providing equal service to all consumers. Thus it is surprising that AT&T would so brazenly offer unequal service to the citizens of Cleveland. What is especially troubling is that in 2007, AT&T took the lead in persuading the Ohio General Assembly to eliminate municipal franchising of cable television providers by promising a new era of cable competition, according to NDIA. *See* <http://www.news-herald.com/article/HR/20070924/NEWS/309249985> (last visited April 18, 2017). Municipal franchising would have prevented redlining, and in 2007 AT&T promised never to redline. But now it appears to have redlined Ohio's largest city.

Fast broadband is a necessity in today's society, as AT&T has long contended and accurately so. Its March 12 response to the NDIA study began by proclaiming that "[a]ccess to the internet is essential." *See* <http://www.news5cleveland.com/news/local-news/oh-cuyahoga/atts-digital-redlining-of-cleveland-neighborhoods> (last visited April 19, 2017). AT&T often makes this point when seeking regulatory relief. *See, e.g.*, AT&T Comments, Lifeline and Linkup Reform and Modernization, FCC WC Docket 11-42 (August 31, 2015), p. 2 ("broadband Internet access service has eclipsed voice service as the critically

important tool in everyday life”) (see <https://ecfsapi.fcc.gov/file/60001223938.pdf> (last visited April 19, 2017)). And AT&T is correct. In today’s society, broadband is as vital to survival as health care, education and employment. Indeed broadband is the vehicle by which consumers most readily access each of those independently essential attributes of life.

We are studying these threshold questions:

- Does AT&T’s behavior in Cleveland, and any other cities where similar practices may exist, violate 42 U.S.C. §1981’s command that “[a]ll persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts ... as enjoyed by white citizens”?
- Does AT&T’s behavior in Cleveland trigger an obligation of the FCC, and of the Ohio Public Service Commission, under Section 706 of the Telecommunications Act of 1996, to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans” by restraining AT&T from continuing to redline and supervising AT&T’s transition to providing equal service to all Cleveland consumers?
- If, as NDIA has alleged, AT&T secured, from the State of Ohio, regulatory relief premised on assurances that AT&T would not redline, but thereafter AT&T redlined, should the State of Ohio reverse itself?
- Is AT&T’s behavior relevant to its FCC character qualifications or its DOJ competitive qualifications to complete its merger with Time Warner, Inc.?
- Should broadband consumers in Cleveland and elsewhere who find AT&T’s practices morally offensive stop purchasing goods and services from AT&T?

We would appreciate an opportunity to meet with you immediately discuss these matters. Further, as an AT&T shareholder, Mr. Parks respectfully requests an opportunity to address the Board of Directors at AT&T’s April 28, 2017 shareholders’ meeting. He will limit his remarks to the question of how AT&T’s broadband deployment in Cleveland impacts shareholder interest because redlining undermines brand loyalty and thus diminishes sales while increasing churn; and universal fast broadband lifts the poor into the middle class, thus turning loyal but low-spending customers into loyal high-spending customers.

Specifically, Mr. Parks will recommend that an appropriate committee of the board be directed to work collaboratively with Cleveland Broadband Consumers to develop

a plan that will promptly and permanently put an end to even the appearance of redlining by AT&T. Should this collaborative approach be rejected, Cleveland Broadband Consumers will be compelled to use whatever lawful means are available to them to seek redress.

This matter came to light after the November 11, 2016 deadline for submission of stockholder proxy materials to be considered at the Annual Meeting. It is, however, of urgent and timely importance to the shareholders. Its resolution cannot wait until 2018. The Board is empowered to hear the concerns of the shareholders and take remedial steps now. *See* AT&T Bylaws, Article I, Sections 8(b) and (c).

We wish to share this letter with the members of the AT&T Board of Directors. To accomplish that, we respectfully request that you transmit the letter to each director via internal AT&T mail to ensure that it is properly and immediately received.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Parks', with a long, sweeping horizontal line extending to the right.

Daryl D. Parks, Esquire
Parks & Crump, LLC
240 N. Magnolia Drive
Tallahassee, FL 32301
(850) 224-6400

cc: AT&T Board of Directors:

- o Samuel DiPiazza
- o Richard Fisher
- o Scott Ford
- o Jimmy Hayes
- o Glenn Hutchins
- o William Kennard
- o Joe Madonna
- o Michael McAllister
- o John McCoy
- o Beth Mooney
- o Joy Roche
- o Matthew Rose
- o Cynthia Taylor
- o Laura Tyson
- o Geoff Yang

State of Ohio

- Governor John R. Kasich
- Clifford A. Rosenberger, Speaker of the House
- House of Representatives, The Ohio Legislature
- Larry Obhof, Senate President
Senate, The Ohio Legislature
- Fred Strahorn, Minority Leader
House of Representatives, The Ohio Legislature
- Joseph Schiavoni, Minority Leader
Senate, The Ohio Legislature

Members of Congress:

- Hon. Greg Walden
Chairman, Committee on Energy & Commerce
- Hon. Marsha Blackburn
Chairman, Subcommittee on Communications and Technology
Committee on Energy and Commerce
- Hon. Frank Pallone
Ranking Member, Committee on Energy and Commerce
- Hon. Michael Doyle
Ranking Member, Subcommittee on Communications and Technology
Committee on Energy and Commerce
- Hon. Bobby Rush
Member, Subcommittee on Communications and Technology
Committee on Energy and Commerce
- Hon. G.K. Butterfield
Member, Subcommittee on Communications and Technology
Committee on Energy and Commerce
- Hon. Yvette Clarke
Member, Subcommittee on Communications and Technology
Committee on Energy and Commerce
- Hon. Marcia Fudge
Member of Congress (11th District, Ohio)
- Hon. Joyce Beatty
Member of Congress (3rd District, Ohio)



Stacey Maris
Senior Vice President -
Assistant General Counsel and Secretary

AT&T Inc.
208 S. Akard Street
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T 214.757.3330
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April 28, 2017

Mr. Daryl D. Parks, Esquire
Parks & Crump, LLC
240 N. Magnolia Drive
Tallahassee, FL 32301

Via Facsimile and U.S. Mail

Dear Mr. Parks:

Re: April 24 Letter Regarding Broadband Deployment in Cleveland

This letter follows my letter of April 25, 2017 concerning the above-referenced matter. As you requested, your April 24 letter was considered by the full AT&T Board of Directors at its meeting yesterday. After discussion, the Board instructed Management to prepare a fulsome response to your letter.

Per the Board's instruction, AT&T will deliver a substantive response to your letter promptly. In the meantime, please rest assured that AT&T, including its Board, takes the issues you raise seriously, but we do not agree with the allegations contained in your letter. Over the past five years, we have invested \$135 billion in our wireless and wired networks to bring broadband to consumers, and we don't favor any demographic when it comes to providing any service we offer.

Thank you for your correspondence to the AT&T Board of Directors. If I can answer any questions, please do not hesitate to give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Stacey Maris".
Stacey Maris

AT&T



James Meza III
Senior Vice President
and Asst. General Counsel

AT&T Services Inc.
2260 East Imperial Hwy.
El Segundo, CA 90245

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*Licensed in TX & LA
CA Registered In-House Council*

May 5, 2017

Mr. Daryl D. Parks, Esquire
Parks & Crump, LLC
240 North Magnolia Drive
Tallahassee, Florida 32301

Via Facsimile and U.S. Mail

Re: *April 24, 2017 Letter Regarding Broadband Deployment in Cleveland, Ohio*

Dear Mr. Parks:

As you are aware, the AT&T Board of Directors has received and considered your letter referenced above. After discussion, the Board directed that AT&T prepare this substantive response. I am the Legal Officer responsible for the operations of AT&T's Entertainment Group, which provides wireless and wired broadband service to U.S. consumers. Going forward, I will be your contact point for any questions or correspondence related to this issue.

First and foremost, please rest assured that we take seriously the issues raised in your letter. Providing ubiquitous high-speed access to the internet is central to our mission as a company. Over the past five years alone, we have invested \$135 billion in our wired and wireless broadband networks – more than any other public company in any industry in the United States – to allow Americans of all income levels the opportunity to enjoy all that the internet offers.

Second, we will continue to expand our broadband footprint in Ohio and other states we serve. We invested more than \$1.4 billion in our Ohio networks over the past three years, and \$200 million in Cleveland specifically. At the same time, we are continuing to implement our plan to deploy fiber-to-the-premises to at least 12.5 million mass market customer locations in our wireline footprint by 2019. Further, we are experimenting with new technologies (including fixed wireless, 5G wireless, and other new technologies) to bring even more high speed broadband connections to consumers across our footprint. We also are participating in the FCC's Connect America Fund program to extend our reach as we continue to invest in our world-class wireless network.

Third, AT&T is engaged in a targeted effort to promote broadband adoption by low-income customers. We call it "Access from AT&T," and it features low monthly rates for the fastest of five wireline broadband services available to eligible participants – 10 Mbps and 5Mbps for \$10 per month, and 3Mbps, 1.5Mbps or 768Kbps for \$5 per month. We also waive credit checks and installation and equipment fees for participating households. We have partnered with national, state and local groups across the country (including in Cleveland) to educate potential participants regarding this program. And we have joined with the U.S. Department of Housing and Urban Development's ConnectHome initiative to help connect families living in HUD-assisted housing to low-cost Internet service.

With this background, let me now address the allegations in your letter, with which we respectfully disagree. Put simply, we do not engage in so-called digital redlining. Your allegations rely on a study by the National Digital Inclusion Alliance (NDIA),¹ which purports to find evidence of redlining based on an analysis of AT&T's wireline broadband deployment in only five wire centers in Cleveland (out of more than 250 in Ohio and 4,600 across our footprint). This study is flawed and its conclusions are specious. AT&T's investment decisions are based on cost and demand forecast modeling to determine where we can serve potential customers and, at the same time, recover the costs of deployment. Many factors are considered in this analysis. They include the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations. They do *not* include household income, race or ethnicity; those considerations simply are not part of our analysis.

Indeed, nothing in the NDIA study demonstrates otherwise. The five Cleveland wire centers on which NDIA hinges its analysis do not paint a complete or accurate portrait of our broadband offerings in Cleveland or elsewhere in Ohio. Across Ohio, including the Cleveland area, there are higher income areas to which AT&T currently can provide only lower speed wireline broadband services, and there are lower income areas to which we currently offer higher speed services. Indeed, looking at AT&T's deployment of wireline broadband across its entire Ohio footprint reveals that the proportion of customers with access to AT&T's higher speed wireline broadband services (18Mbps and faster) and lower speed services (6Mbps or slower) is roughly comparable, regardless whether households are below the poverty line or not.

NDIA's study is flawed in other respects as well. Among other things, it ignores AT&T's deployment of, and consumer demand for, mobile broadband services. AT&T's LTE mobile broadband network and services are available ubiquitously throughout Cleveland, including the five wire centers identified by NDIA. And many customers prefer mobile broadband services. Nationally, approximately half (49.3 percent) of households have "cut the cord" and are wireless only for telephone service. Ohio outpaces the national average with 51 percent of households utilizing wireless services only. Among Lifeline customers (a program developed to assist low income customers), cord-cutting seems even more prevalent, with approximately 90 percent of those customers choosing wireless over wireline services.² Similar trends are developing with broadband. Indeed, in 2015, the Pew Research Center reported that smartphone utilization had reached parity with home broadband use (which had plateaued), with the rise in "smartphone-only" adults especially pronounced among low-income households (defined as those with annual incomes of \$20,000 or less) and rural adults.³ Now that every major wireless provider offers unlimited data plans, mobile broadband will presumably become even more attractive as mobile data prices continue to drop.

¹ "AT&T's Digital Redlining" (rel. Mar. 10, 2017), available at <https://digitalinclusion.org/blog/2017/03/10/atts-digital-redlining-of-cleveland/> (last checked Apr. 30, 2017) (NDIA Report).

² <http://usac.org/li/about/process-overview/stats/total-support.aspx> (last checked (May 3, 2017).

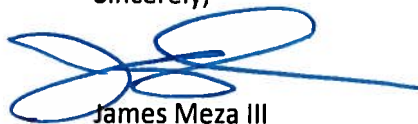
³ <http://www.pewinternet.org/2015/12/21/home-broadband-2015/> (last checked 5/1/17).

We also disagree with any suggestion that we have violated any law or regulation in connection with AT&T's wireline broadband deployment in Cleveland. Although you reference Section 1981 of the Civil Rights Act, 42 U.S.C. § 1981, that provision prohibits racial discrimination in entering and enforcing contracts. As discussed above, AT&T's decisions related to wireline broadband deployment in Cleveland consider neither the income nor the race of current and potential customers, much less discriminate on that basis. Therefore, your letter asserts no colorable § 1981 claim.

Likewise, you question whether NDIA's allegations trigger an obligation on the part of the FCC or the Public Utilities Commission of Ohio under section 706 of the Federal Communications Act to "restrain AT&T from continuing to redline." Section 706, however, focuses on the deployment of broadband services generally to all Americans – not the deployment of a particular broadband service (or by a particular broadband provider) to consumers in a particular geographic area. Insofar as at least 93 percent of the households served by the Cleveland wire centers identified by NDIA have access to cable broadband services at speeds of 50Mbps or higher, and all such households have access to multiple mobile broadband networks, your reference to section 706 is misplaced, as the objective of that section already has been met.

I trust that this response addresses your concerns. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

James Meza III

By Courier Service

May 23, 2017

Randall Stephenson
Chairman, CEO and President
AT&T
208 S. Akard Street
Dallas, TX 75202

Stacey Maris
Senior Vice President and Secretary
AT&T
208 S. Akard Street, Suite 3241
Dallas, TX 75202

James Meza III
Senior Vice President and Assistant General Counsel
AT&T
2260 East Imperial Highway
El Segundo, CA 90245

Dear Mr. Stephenson, Ms. Maris and Mr. Meza:

Re: Redlining

On behalf of Cleveland Broadband Consumers, I am responding to the May 5, 2017 letter of Mr. Meza ("Meza Letter"), which, on behalf of the AT&T Board of Directors, responded to my April 24, 2017 letter regarding broadband deployment in Cleveland, Ohio.

Among other things, the Meza Letter:

- Denies that AT&T's failure to provide state-of-the-art broadband to most of the predominately low-income (and African American) neighborhoods in Ohio's largest city constitutes redlining;
- Defines redlining in such a way that only an extreme racial bigot could ever be found to be redlining; and
- Interprets the principal civil rights statute in telecommunications – Section 706 of the 1996 Telecommunications Act – in a manner that would render the statute completely impotent.

Since these positions were presented as representing the views of the AT&T Board of Directors, I am asking that my response to this letter be circulated to the Board members for their review.

For ease of reference, I am setting out each of the principal assertions in the Meza Letter and providing comments and questions, the answers to which may highlight the genuine differences of position that will constitute triable issues.

1. *Over the past five years alone, we have invested \$135 billion in our wired and wireless broadband networks – more than any other public company in any industry in the United States – to allow Americans of all income levels the opportunity to enjoy all that the internet offers....[w]e invested more than \$1.4 billion in our Ohio networks over the past three years, and \$200 million in Cleveland specifically....we are continuing to implement our plan to deploy fiber-to-the premises to at least 12.5 million mass market customer locations in our wireline footprint by 2019...*

We also are participating in the FCC's Connect America Fund program to extend our reach as we continue to invest in our world-class wireless network.

The amount of aggregate investment is irrelevant to discrimination in the placement of investments. If you were the City of Ferguson, Missouri, would you open your defense in the Michael Brown case by saying “we spent \$135 million on our Police Department last year?”

You then refer to the Connect America Fund program, which you state will “*extend our reach as we continue to invest in our world-class wireless network.*” Connect America is a rural program. Cuyahoga County is urban.

2. *Further, we are experimenting with new technologies (including fixed wireless, 5G wireless, and other new technologies) to bring even more high-speed broadband connections to consumers across our footprint.*

This assertion raises these questions, and I would appreciate a response:

First, will the deployment of these technologies fully cure the disparities evident in the NDIA/Cleveland study? If so, how will that happen, and how long would that take? In the interim, will the underserved customers be made whole for their loss of digital opportunity?

Second, as these new technologies are being deployed, will the maps and criteria for their deployment schedule resemble the maps in the NDIA study and the criteria identified in the Meza Letter (i.e., “*the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations*”) that yielded the patter of deployment reflected in the NDIA maps?

3. *Third, AT&T is engaged in a targeted effort to promote broadband adoption by low-income customers, We call it “Access from AT&T,” and it features low monthly rates for the fastest*

of five wireline broadband services available to eligible participants – 10Mbps and 5Mbps for \$10 per month, and 3Mbps, 1.5Mbps or 768kbps for \$5 per month. We also waive credit checks and installation and equipment fees for participating households. We have partnered with national, state and local groups across the country (including in Cleveland) to educate potential participants regarding this program. And we have joined with the U.S. Department of Housing and Urban Development’s Connect Home initiative to help connect families living in HUD-assisted housing to low cost Internet service.

A threshold question: please clarify whether consumers not reached with fast broadband are given all four options: 10Mbps, 5 Mbps, 3Mbps, and 768Kbps (all downstream).

None of these options comes close to meeting the FCC’s 2015 definition of broadband (25Mbps down, 3Mbps up). It is especially surprising that AT&T takes pride in offering some Cleveland consumers 768Kbps for \$5.00. Suppose a child is assigned to download and watch CBS’ 1968 documentary “Hunger in America”, which is 51:24 in length and can be found at <https://www.youtube.com/watch?v=h94bq4JfMAA>. The file, which is provided in MP4 format, is 261,215 KB at 480P (progressive scan). Downloading with <https://clipgrab.org/> at 768Kbps will take approximately 2,721 seconds or 45.35 minutes – almost as long as the program itself.

This third-class “offering” is reminiscent of municipalities that used to (and sometimes still do) contract out for inferior ambulance service, inferior water, and inferior electric service to “serve” the poor. Soon the use of these “services” becomes routinized. This is how geographic segregation replicates poverty across generations.

4. *[W]e do not engage in so-called digital redlining. Your allegations rely on a study by the National Digital Inclusion Alliance (NDIA), which purports to find evidence of redlining based on an analysis of AT&T’s wireline broadband deployment in only five wire centers in Cleveland (out of more than 250 in Ohio and 4,600 across our footprint). This study is flawed and its conclusions are specious. AT&T’s investment decisions are based on cost and demand forecast modeling to determine where we can serve potential customers and, at the same time, recover the costs of deployment. Many factors are considered in this analysis. They included the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations. They do not include household income, race or ethnicity; those considerations simply are not part of our analysis [fn. Omitted].*

You state that the NDIA study finds redlining “in only five wire centers in Cleveland (out of more than 250 in Ohio and 4,600 across our footprint).” Thus you are implying that the deployment pattern in Cleveland is *sui generis* and that similar patterns would not manifest themselves in other cities, such as Akron, Toledo, Dayton, Columbus and Cincinnati and other cities and their wire centers among the “250 in Ohio and 4,600 across our footprint” including California. Since you squarely raised this point, I trust you would be willing to provide the documentation to prove it.

I will address the issue of discriminatory intent below (*see* ¶7).

5. *Indeed, nothing in the NDIA study demonstrates otherwise. The five Cleveland wire centers on which NDIA hinges its analysis do not paint a complete or accurate portrait of our broadband offerings in Cleveland or elsewhere in Ohio. Across Ohio, including the Cleveland area, there are higher income areas to which AT&T currently can provide only lower speed wireline broadband services, and there are lower income areas to which we currently offer higher speed services. Indeed, looking at AT&T's deployment of wireline broadband across its entire Ohio footprint reveals that the proportion of customers with access to AT&T's higher speed wireline broadband services (18Mbps and faster) and lower speed services (6Mbps or slower) is roughly comparable, regardless whether households are below the poverty line or not.*

Of course NDIA did not find that every single wealthy neighborhood was served, and every single low-income neighborhood was not served. Such a “less than perfect” or “100 to zero” disparity never defeats a civil rights case. Even in the infamous racial gerrymandering case, *Gomillion v. Lightfoot*, 364 U.S. 339 (1960), at least four African American voters lived within the 28-sided borders of the City of Tuskegee after it was gerrymandered.

Due primarily to issues of terrain and density, rural broadband deployment cannot be compared with urban deployment. This lack of comparability is evident in the Benton Foundation's interactive map showing populations and densities, as of 2013 – <https://www.benton.org/blog/what-section-706-means-net-neutrality-municipal-networks-and-universal-broadband>. The map illustrates that Cuyahoga County, being entirely urban, generally had fixed 25Mbps/3Mbps available, whereas most of Ohio, being rural, did not have these broadband speeds available.

6. *NDIA's study is flawed in other respects as well. Among other things, it ignores AT&T's deployment of, and consumer demand for, mobile broadband services. AT&T's LTE mobile broadband network and services are available ubiquitously throughout Cleveland, including the five wire centers identified by NDIA. And many customers prefer mobile broadband services. Nationally approximately half (49.3 percent) of households have “cut the cord” and are wireless only for telephone service. Ohio outpaces the national average with 51 percent of households utilizing wireless services only. Among Lifeline customers (a program developed to assist low income customers), cord-cutting seems even more prevalent with approximately 90 percent of those customers choosing wireless over wireline services. Similar trends are developing with broadband. Indeed, in 2015, the Pew Research Center reported that smartphone utilization had reached parity with home broadband use (which had plateaued), with the rise in the “smartphone-only” adults especially pronounced among low-income households (defined as those with annual incomes of \$20,000 or less) and rural adults. Now that every major wireless provider offers unlimited data plans, mobile broadband will presumably become even more attractive as mobile data prices continue to drop [fns. omitted].*

People of color have led the way in adoption of mobile broadband. Recognizing this, AT&T has championed mobile broadband while also encouraging fast, affordable, *home* broadband adoption because of its importance in advancing education, health care, employment and civic engagement.

Thus, it is a surprise that AT&T now believes that low income consumers' uptake of mobile broadband excuses AT&T's failure to provide equal access to first class fast home broadband service.

7. *We also disagree with any suggestion that we have violated any law or regulation in connection with AT&T's wireline broadband deployment in Cleveland. Although you reference Section 1981 of the Civil Rights Act, 42 U.S.C. § 1981, that provision prohibits racial discrimination in entering and enforcing contracts. As discussed above, AT&T's decisions related to wireline broadband deployment in Cleveland consider neither the income nor the race of current and potential customers, much less discriminate on that basis. Therefore, your letter asserts no colorable §1981 claim.*

Although intent is an element of a Section 1981 claim (see *General Bldg. Contractors Ass'n. v. Pa.*, U.S. 375 (1982)), we do not expect it will be difficult to persuade a Cleveland jury to infer intent from the rather stark facts. As you know, a facially neutral decision rule is often struck down where the resulting pattern is unexplainable unless race had been a material factor. Courts often consider cases involving civil rights statutes with intent requirements, and infer discriminatory intent where the statistical and other evidence cannot be explained away by the pretextual justifications of the defendant. This drawing of inferences commonly arises in litigation under the Voting Rights Act. For example, in *North Carolina State Conference of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016), *cert denied*, 581 U.S. ____ (2017), the 4th Circuit overturned parts of North Carolina's highly restrictive 2013 voting law, noting that the provisions "target African Americans with almost surgical precision" and "impose cures for problems that did not exist."

No jury that's paying attention is going to find that it was just an accident that in Cleveland – and Toledo, and Dayton, and Cincinnati, and Columbus, and Detroit – and California – your use of every conceivable metric *except* race and income just happened to yield maps that exclude low income African American neighborhoods everywhere with almost surgical precision.

Finally, to the extent that AT&T collaborated with housing developers to install its service in residential housing, your activities are subject to the Fair Housing Act (FHA). As you know, disparate *impact* claims are cognizable under the FHA. *Texas Dep. Housing & Cmty Affairs v. Inclusive Communities Project*, 576 U.S. ____, 135 S.Ct. 2507, No. 13-1371, (decided June 25, 2015) (slip op., p. 2513). It will be difficult for you to avoid a disparate impact finding given that the Chairman of the FCC, in a March 15, 2017 address at Carnegie Mellon University, characterized the NDIA study as finding that "fiber was much less likely to be deployed in the low-income neighborhoods."

8. *Likewise, you question whether NDIA's allegations trigger an obligation on the part of the FCC or the Public Utilities Commission of Ohio under section 706 of the Federal Communications Act to "restrain AT&T from continuing to redline." Section 706, however, focuses on the deployment of broadband services generally to all Americans – not the deployment of a particular broadband service (or by a particular broadband provider) to consumers in a particular geographic area. Insofar as at least 93 percent of the households served by the Cleveland wire centers identified by NDIA have access to*

cable broadband services at speeds of 50Mbps or higher, and all such households have access to multiple mobile broadband networks, your reference to section 706 is misplaced, as the objective of that section already has been met.

You maintain that Section 706 provides no protection to consumers beyond ensuring that most (93 % is your number) consumers have one service of 50Mbps or higher (again, your number). Thus, by your reasoning, if Comcast does not redline, it matters not that AT&T does. Further, by your reasoning, Section 706 would provide no protection from redlining by AT&T as long as (most of) the poor have *one* fast broadband service to choose from. By your reasoning, the poor are not entitled to broadband competition. AT&T's current reading of Section 706 is on all fours with a contention that the protection afforded by the public accommodations section of the 1964 Civil Rights Act (42 U.S.C. §200a) reaches only one restaurant: as long as we can eat McDonald's, the Denny's next door can refuse us service.

Finally, it almost goes without saying that you are prohibited from redlining by Section 202 of the Communications Act, unless the Commission repeals that coverage retroactively and the courts uphold such action.

You evidently have decided not to meet with my team or to address our proposal to empanel a board committee to address the redlining issue. Consequently, unless given good reason not to proceed, within the next three weeks we will take the following steps:

1. We will certify our class;
2. We will bring a formal complaint at the FCC invoking, *inter alia*, Title II and Section 706; and
3. We will inform the nation's governors of the deployment patterns in Cleveland and California that the NDIA and U.C. Berkeley studies have established. In that way, the governors can better determine how to evaluate your qualifications to provide the emergency communications service to low-income communities that first responders in disasters such as Hurricanes Andrew, Katrina and Sandy have recognized as top priorities.

Sincerely,
Parks & Crump, LLC



Daryl D. Parks, Esquire
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Tallahassee, FL 32301

cc: AT&T Board of Directors:



James Meza III
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VIA E-MAIL AND U.S. MAIL

June 12, 2017

Re: May 23, 2017 Letter Regarding Broadband Deployment in Cleveland, Ohio

Dear Mr. Parks:

Thank you for your response to my May 5, 2017 letter, regarding your allegations of digital redlining in Cleveland. At the outset, I wish to emphasize that AT&T shares your goal of bringing high speed broadband as quickly as possible to underserved communities in both rural and urban areas. AT&T has a well-recognized, longstanding commitment to inclusion and diversity. Accordingly, I invite you and members of your team to meet in person with senior executives in our external affairs and legal organizations to discuss this matter. I am hopeful that direct discussion would be productive for both sides.

While we respect your concerns, there is no legal or factual basis to assert that AT&T is engaged in unlawful redlining or has violated civil rights statutes, such as 42 U.S.C. § 1981. Section 1981 requires a showing of racial animus or intentional discrimination. Neither is present here. As we have stated, we base our investment decisions on neutral and legitimate business considerations. For that reason, you could not establish a Section 1981 violation by attempting to show that our neutral broadband deployment policies had a disparate impact on different racial groups.

Furthermore, Section 1981 applies only to conduct associated with services that are already being supplied and not the types of investment decisions that your letter addresses. See 42 U.S.C. § 1981 (applicable to "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship."). Thus, a plaintiff must show that he or she "has or would have rights under the existing or proposed contractual relationship," *Domino's Pizza, Inc. v. McDonald*, 546 U.S. 470, 476 (2006), which the Sixth Circuit has emphasized applies only to "services ordinarily provided by the defendant." *Christian v. Wal-Mart Stores, Inc.*, 252 F.3d 862, 872 (6th Cir.), opinion supplemented on denial of

reh'g, 266 F.3d 407 (6th Cir. 2001). Because AT&T offers services supported by the infrastructure that it has in place without regard to membership in a protected class, all similarly situated persons are entitled to receive the same contractual rights.

Section 1981 does not require service providers to provide *additional* services or to change the nature or scope of their service offerings. Just as the statute does not require retailers to open additional stores or change their product offerings, neither does it require service providers like AT&T to make additional infrastructure investments to offer different services or to provide them in new locations. See *Chapman v. YMCA of Greater Buffalo*, 161 F.R.D. 21, 24 (W.D.N.Y. 1995).

Although we are confident that AT&T's broadband deployment in Cleveland and elsewhere is fully consistent with all legal requirements and with our own commitments to inclusion and diversity, we would welcome the opportunity to engage further with you on how we can even better serve the communities in which we operate. I look forward to hearing from you regarding the meeting I have proposed.

Sincerely,

A handwritten signature in blue ink, consisting of several loops and a long horizontal stroke extending to the right.

James Meza III

By Courier Service

July 24, 2017

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Dallas, TX 75202

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Senior Vice President and Secretary
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El Segundo, CA 90245

Robert Quinn
Senior Vice President, External and Legislative Affairs
AT&T
1120 18th Street, NW
Washington, DC 20036

Dear Mr. Stephenson, Ms. Maris, Mr. Meza and Mr. Robert Quinn:

Re: Redlining

On behalf of Cleveland Broadband Consumers, I am writing to illuminate a key issue we would like to address in the wake of the meeting with Mr. Quinn and his team at 9:30 AM this past Friday, July 21, 2017. Inasmuch as this issue goes to the basic reliability of the company's most fundamental communications with the FCC and with its key stakeholders, it ought to be addressed at the governance level of the company. Consequently and respectfully, I am renewing my April 24, 2017 request for a meeting with Mr. Stephenson. Further, as a stakeholder, I am asking the board for an opportunity to address this issue at its next meeting.

In your earlier correspondence to me, and in the July 21 meeting, the company attempted either to justify or explain the stark disparities in fast broadband deployment in Cleveland on grounds of race-neutrality and income-neutrality. Mr. Meza's May 5, 2017 letter to me state that:

AT&T's investment decisions are based on cost and demand forecast modeling to determine where we can serve potential customers and, at the same time, recover the costs of deployment. Many factors are considered in this analysis. They include the state of the existing network, topology, the ability to use aerial cable rather than more expensive buried cable, the existence and type of competition that is present, the size of our existing customer base, the number and density of households, civic cooperation, and other standard business considerations. They do *not* include household income, race or ethnicity; those considerations simply are not part of our analysis.

Amplifying on this issue at our July 21 meeting, Mr. Quinn was surprisingly combative, saying "I'm a litigator too, and not as diplomatic as my predecessor" making it clear that he was looking for a fight. Mr. Quinn went so far as to characterize the NDIA-documented service disparities as strictly an economic issue – "non-service" (!) based entirely on cost and demand – and thus justified as long as after 45 minutes of the 1-½ hour scheduled meeting. I did not find this Donald Trump-like, "my way or the highway" approach conducive to working with stakeholders to solve problems.

We do not agree that "non-service" to mostly minority, impoverished neighborhoods is not redlining. Among other things, "demand forecast modeling" often translates as disposable income or wealth. Wealth is virtually a proxy for race, given that the wealth gap is at least 13:1 according to Pew, Brandeis and others.

Moreover, from the vantage point of the "non-served", it matters not whether racial animus or "demand forecast modeling" leaves them last in line to cross the digital divide.

Still, let's assume for the sake of argument that your claim of race- and income-neutrality is valid. *Why, then, did AT&T not disclose in 2007-2010 to the FCC, and to its civil rights organization stakeholders and supporters in the net neutrality debates, that you planned to roll out fast broadband along the lines of the Cleveland NDIA map?* If you had "neutral" reasons for your rollout schedule, couldn't you have explained that? Why did AT&T instead withhold its rollout plans and maps, only to have NDIA assemble and release them? Can you see how this lack of transparency created the appearance that you had something to hide?

Indeed, your public advocacy, specifically during the years when you were planning and deploying broadband in cities like Cleveland, created the clear impression that you intended to deploy ubiquitously. In your 2007 Broadband Industry Practices Reply Comments,¹ you stated that:

[E]mpirical studies show that, each time the government has *relaxed* regulatory burdens on wireline broadband providers, those providers have responded by expanding their networks and dropping their prices. That is why the commenters most concerned with closing the "digital divide" – with extending the benefits of broadband to rural and low-income communities – oppose net neutrality regulation. [p. 13; fns. omitted; citing comments p. 47 n. 152 that expressly connect light touch Internet regulation with deployment to inner city communities].²

Further, in your 2010 Open Internet Reply Comments,³ you stated that:

¹ Reply Comments of AT&T Inc., Broadband Industry Practices, WC Docket No. 07-52 (filed July 16, 2007), available at <https://ecfsapi.fcc.gov/file/6519558101.pdf> (last visited July 17, 2017).

² Footnote 152 reads:

LULAC Comments 1 (“While large numbers of Latinos have enjoyed increased economic, educational and political opportunity with the click of a mouse, for a variety of reasons, others have not yet experienced the benefits of the Internet.... [W]e urge policymakers to cast a skeptical eye on proposed net regulations that could reduce the incentive to invest and, thereby, limit innovation and deployment to underserved communities.”); Labor Council for Latin American Advancement Comments 1 (“[M]any of today’s broadband providers are investing capital to increase broadband deployment.... Additional regulation of these providers, as advocated by supporters of ‘net neutrality,’ would actually inhibit their efforts, and thus slow the progress we so desperately would like to witness on behalf of our members and the Latino community. Net neutrality laws will take away the incentives these providers have to invest, and will leave Latinos specifically, and Americans overall with less access[.]”); Hispanic Technology & Telecommunications Partnership Comments 2 (“[N]o compelling reason currently exists to establish new regulations in addition to the FCC’s existing policy statement.... [We] encourage the Commission to seek policies that promote investment, development of new technologies, and the expansion of broadband services. If this happens we will be well on our way to eliminating the digital divide for Hispanics and all underserved Americans.”); *see also Hermalin and Katz, supra*, at 2 [Benjamin E. Hermalin & Michael L. Katz, *The Economics of Product-Line Restrictions with an Application to the Network Neutrality Debate*, Competition Policy Center, at 2 (2006) (<http://repositories.cdlib.org/iber/cpc/CPC06-059>)] (“consumers at the bottom of the market-the ones that single-product restrictions typically are intended to aid-are almost always harmed by the restriction” on differentiation among product lines).”

³ Reply Comments of AT&T Inc., Preserving the Open Internet, GN Docket No. 09-191 *et al.* (filed April 26, 2010), available at <https://ecfsapi.fcc.gov/file/7020437381.pdf> (last visited July 17, 2017).

[C]alls for net neutrality regulation are an unfortunate distraction from the important work that remains to be done in bringing ultra-fast next-generation Internet service to all Americans (p.1) ...

And [many parties] rightly caution the Commission about the unintended consequences of such rules, such as hindering broadband investment and innovation, widening the digital divide, ceding U.S. leadership in Internet technology, depressing job creation and economic growth, and increasing security risks for networks and consumers.

The voices in this emerging consensus include not only AT&T and hundreds of other broadband network operators-ranging from cable companies to CLECs like Covad, to rural ILECs like the members of NECA, to international providers like Telefonica-but also:

- Civil rights groups such as the NAACP and LULAC (pp.2-3), citing, in n. 2, a letter from a leader of the NAACP and a commentary from the Executive Director of LULAC, as well as an op-ed by Navarrow Wright, Who Pays the Price for Net Neutrality?, Huffington Post, Jan. 18, 2010, available at http://www.huffingtonpost.com/navarrow-wright/who-pays-the-price-for-net-neutrality_b_427500.html last visited July 17, 2017) (“When I read the blogs and filings of groups like Free Press and Public Knowledge, I wonder who they really represent.... The FCC is playing a dangerous game here, and *the people who have the most to lose are already the socially and economically disenfranchised members of our national community-low-income, rural, urban, non-English speaking, tribal, minority ... and underserved populations*”) (emphasis supplied).

Anyone reading this would never imagine that AT&T’s actual deployment plans omitted minority communities in Cleveland and other major cities. Certainly any carrier planning to spend billions of dollars deploying broadband would have known years in advance where it was going to roll out its service first – and last. Had AT&T disclosed in 2007 or 2010 that its actual plans were to deploy by 2017 along the lines of the NDIA Cleveland maps, the civil rights organizations, as well as the FCC, certainly would have asked for clear assurances that such deployment would have been rare, temporary, and not tainted with the breath of the conscious or unconscious racial animus that unfortunately can linger in the corridors of even the most well intentioned companies.

By *not* having disclosed your actual plans in 2007 and 2010, you created the current dilemma. I am certain civil rights leaders wish you had told them, years ago, that you didn’t intend to deploy with dispatch in their constituents’ communities, where the need was greatest. But they trusted you. They could have handled the news.


Not having told the FCC is quite another matter. The FCC expects its regulatees to place on the record all material facts. It knows nothing of demurrers. Asking the FCC to impose only light-touch regulation because it would help close the digital divide certainly makes a company’s plans *not* to close the digital divide in deployment highly relevant, irrespective of whether such a plan is or isn’t “redlining” as we say it is, or whether it is or is not “illegal” as we say it is. This conscious nondisclosure was a classic “material omission,” and the Commission will have to decide how to address it.⁴

I do not want to take up Mr. Stephenson’s time debating what went wrong. We will never agree on that. Instead, we should focus on what’s going to happen when 5G is rolled out and FirstNet. Why should the governors of our country allow AT&T to build out the greatest communication highway in the world, with taxpayers’ dollars, when you are redlining against the nation’s most vulnerable populations? The answer is easy, they should not. FirstNet is an honor you do not deserve until you eliminate your redlining practices.

These are questions of planning and communication, which reasonable people can resolve even while they disagree on the law. But in the wake of Mr. Quinn’s well informed but belligerent presentation, it’s clear that AT&T should be addressing this subject as one of governance as well as one of law and policy.

So that we may share this letter with the members of the AT&T Board of Directors, please transmit the letter to each director via internal AT&T mail to ensure that it is properly and immediately received.

Sincerely,
Parks & Crump, LLC



Daryl D. Parks, Esquire
240 N. Magnolia Drive
Tallahassee, FL 32301

⁴ Resolving different holdings by circuit courts of appeals, the Supreme Court recently held unanimously, that material omissions can be treated the same as misrepresentations. When the defendant “omits its violations of statutory, regulatory, or contractual requirements, those omissions can be basis for liability if they “render the defendant’s representations misleading with respect to the goods or services provided.” *Universal Health Services v. U.S.*, 136 U.S. 1989, 1999 (2016).

cc: AT&T Board of Directors:

- o Samuel DiPiazza
- o Richard Fisher
- o Scott Ford
- o Jimmy Hayes
- o Glenn Hutchins
- o William Kennard
- o Joe Madonna
- o Michael McAllister
- o John McCoy
- o Beth Mooney
- o Joy Roche
- o Matthew Rose
- o Cynthia Taylor
- o Laura Tyson
- o Geoff Yang

State of Ohio

- o Governor John R. Kasich
- o Clifford A. Rosenberger, Speaker of the House
- o House of Representatives, The Ohio Legislature
- o Larry Obhof, Senate President, The Ohio Legislature
- o Fred Strahorn, Minority Leader, House of Representatives, The Ohio Legislature
- o Joseph Schiavoni, Minority Leader, Senate, The Ohio Legislature



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August 3, 2017

Mr. Daryl Parks, Esquire
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Dear Mr. Parks,

I am in receipt of your letter dated July 24, 2017 addressed to Randall Stephenson, Jim Meza, Stacy Maris and me. Let me start by stating that, as requested, we shared and discussed your letter with Mr. Stephenson and our Board of Directors at our regularly scheduled July Board meeting last week. Let me also state that I am sorry you perceived me to be belligerent or combative during the meeting. I can assure you that it was not my intent to pick a fight with you, but rather to get us on the path of resolving the concerns you have expressed in your letters on this subject. I had only wished to convey that we believe your legal allegations concerning redlining are not supported by the facts of this case or law. If in conveying our side of that case, I did that in a manner you perceived as aggressive or disrespectful, I sincerely apologize. The entire purpose of the meeting was to seek to find some common ground upon which we could work together to pursue our mutual goal to ensure that the benefits of broadband are received across all socio-economic groups. I am hopeful we can continue that aspect of our discussion.

As I explained in the meeting, AT&T does not redline. We do not take race, ethnicity, or income into account in determining whether a specific broadband technology can be deployed in a given area. I also highlighted that we seek out any efficient access technology to deliver broadband to our consumers. As we move into a 5G mobile world, we will use that technology to expand the availability of bigger and faster broadband, particularly in areas where the economics of fiber are prohibitive I had hoped that expansion of our mobile broadband technology could provide the basis for addressing some of the issues raised in your letters, particularly because research suggests that fixed home broadband adoption rates have plateaued while mobile broadband reliance continues to grow. One of the main problems with the NDIA study you have referenced is that it ignores the wireless infrastructure which AT&T has deployed ubiquitously in Ohio, including in the five wire centers that are highlighted in the NDIA study.

AT&T



We truly believe wireless technology will help us to achieve our common goals. I believe we can engage in a productive and cordial discussion regarding how to pursue an agenda to upgrade that wireless infrastructure, including deploying small cell technology in those wire centers as we begin moving down the path towards 5G. I would like to continue that dialog as I thought we agreed to do at our meeting. I will contact you again early next week to see if you are willing to begin those discussions.

Sincerely,

Robert W. Quinn